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HEARINGS

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ORIGINAL

COMMITTEE ON PUBLIC WORKS

# UNITED STATES SENATE

A BILL TO AMEND THE CLERK'S DUTY  
AND FOR OTHER PURPOSES

## EXECUTIVE SESSION

Washington, D. C.

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A BILL TO AMEND THE CLEAN AIR ACT,  
AND FOR OTHER PURPOSES

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EXECUTIVE SESSION

- - -

Monday, August 31, 1970

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United States Senate,  
Committee on Public Works,  
Washington, D. C.

The committee met, pursuant to recess, at 2:50 p.m. in  
room 4200, New Senate Office Building, Senator Jennings Randolph  
(chairman of the committee) presiding.

Present: Senators Randolph, Young, Muskie, Jordan, Spong,  
Eagleton, Cooper, Boggs, Baker, and Gurney.

Staff Members Present: Richard B. Royce, chief clerk and  
staff director; Barry Meyer, counsel; Thomas C. Jorling, minor-  
ity counsel; Leon G. Billings, Richard D. Grundy, Harold H.  
Brayman, Richard W. Wilson, J. B. Huyett, Jr., Adrien Waller,  
and Philip T. Cummings, Professional Staff Members.

The Chairman. Gentlemen, it is my suggestion -- I will  
accommodate my thinking to the membership of the committee --  
that at this hour, we should begin, Ed, and those of you who sit  
at the table, our further deliberations on the matter of the  
further extension of the Clean Air Act.

1 Senator Muskie. Yes, there are certain authorizations,  
2 Mr. Chairman, that expired on June 30, 1970, under the previous  
3 legislation. We had authorizations extended to August 31st by  
4 a similar action at about that time, and now that new deadline  
5 is expiring, and I think it makes sense that we request an  
6 extension of the authorizations until November 30 of this year.

7 We may have acted long before then to enact the new legis-  
8 lation, but that would give us ample time, I think.

9 The Chairman. That is right, Ed, and we wouldn't want to  
10 come back the third time and ask for an extension.

11 Senator Muskie. That would be a continuation on the same  
12 basis as the program has been ongoing up until this time.

13 The Chairman. Is there any objection, gentlemen, to such  
14 a move?

15 Senator Gurney. You said November 30th?

16 The Chairman. Yes, instead of the suggested date of Octo-  
17 ber 13th. It would seem that there we might run into a situa-  
18 tion similar perhaps to what we face now.

19 This would give you, Ed, a framework in which to operate.

20 Senator Gurney. I agree.

21 The Chairman. Without objection, then, ---

22 Senator Spong. I have none.

23 The Chairman. Without objection, then, we will handle this  
24 request in the proper way in the Senate.

25 Senator Jordan. Would that be instead of October 15th,

1 November 30th?

2 Senator Muskie. November 30th.

3 Senator Jordan. November 30th, as written in this bill  
4 here.

5 Senator Muskie. Right.

6 The Chairman. Thank you.

7 Now, Dick, will you refresh our minds as to the procedure  
8 and the point of procedure at which we were in discussion when  
9 we stopped at the prior meeting?

10 Mr. Royce. Mr. Chairman, we have had so many meetings  
11 since then with the staff, I am a little confused on this point.  
12 I think the committee had gone through Sections 110, 111, all the  
13 way through from the beginning, and at the time that we broke  
14 at the last Executive Session, we were on Section 113, New  
15 Source Standards of Performance.

16 Senator Spong. What page?

17 Mr. Royce. Page 22.

18 Senator Muskie. I think the order was different than that,  
19 Dick. As I recall, we decided first to consider those items  
20 which have been referred to the full Committee without thorough  
21 discussion in the Subcommittee, and we covered, I think, five  
22 subjects, and I think we finished that.

23 Mr. Royce. We had finished those five subjects, yes.

24 Senator Muskie. Now, what were those five subjects? They  
25 were used automobiles, fuel additives, court extension provision.

1 noise pollution, and what was the other? There is a fifth.

2 The Chairman. You say used autos, fuel additives, court  
3 extension -- what is the next one?

4 Mr. Royce. Noise pollution.

5 Senator Jordan. Fuel additives?

6 Senator Muskie. Yes. And the other was the question of  
7 the Court review.

8 Mr. Billings. Review of the environmental policy state-  
9 ments by the Secretary.

10 Senator Muskie. That is right, the other one was the  
11 review of the environmental policy statements. Relatively minor.  
12 The important items in that list were the first three.

13 Review. The Environmental Quality Act requires that there  
14 be policy statements with respect to major actions taken by any  
15 Executive Agency that has an environmental impact, and this  
16 would make it clear that the Secretary is covered by that pro-  
17 vision of the Environmental Quality Act.

18 Senator Jordan. Used autos, fuel additives, and that one,  
19 and ---

20 Senator Muskie. Court extension and noise pollution.

21 Now, it is my impression that those were covered. Now,  
22 of course, any question is open at any time at the present stage  
23 of committee action to go over.

24 Senator Jordan. Did you agree on all of these?

25 Senator Muskie. We did. There are some -- on the question

1 of fuel additives, the staff was directed to prepare some addi-  
2 tional language. I think other than that, we have agreed, tenta-  
3 tively. There were no votes taken.

4 Mr. Royce. That is correct, sir.

5 Senator Jordan. I unfortunately couldn't get back. I am  
6 sorry. I just had to be at an Agriculture meeting. They were  
7 trying to finish up a bill to get out, and we did, and nobody  
8 liked it, but it's out.

9 Senator Muskie. So then my suggested procedure after that  
10 was first to leave the automobile emissions question until we  
11 finished everything else in the bill, and so I had suggested  
12 that at this point, we take up any questions that any member of  
13 the committee had about any part of the bill, rather than go  
14 through it, you know, page by page, for 85 pages.

15 And it may be that members have questions that we haven't  
16 focused on since the last meeting, but I would hope that if  
17 there are any such, that we might get to them at this point.

18 You might be amused by two communications we have had on  
19 some portions of the bill. You know, on this question of health  
20 standards, we phrased and rephrased that, and we finally came  
21 down to the phrase, "health of any persons". Well, we got two  
22 suggestions for change: one from the manufacturing chemists,  
23 who urged that we restore the phrase "public health", because  
24 they thought that would be less restrictive, and the other from  
25 the environmental action groups, which recommended that we

1 reinstate the phrase "public health", because they thought it  
2 would be more restrictive.

3 So if you are frustrated about the business of writing  
4 legislation, you might bear that in mind.

5 Senator Gurney. Mr. Chairman, may I make an inquiry at  
6 this point?

7 The Chairman. Yes, you may, Ed.

8 Senator Gurney. I am fully aware of the fact that the  
9 Staff has had all of the input from these people that I have  
10 had. The Manufacturing Chemists -- they have got about one  
11 hundred suggestions here, I guess, and I understand a lot of  
12 changes have been made, as a result of their suggestions, and  
13 other people's suggestions.

14 When are we going to be advised as a committee of these  
15 changes? Are we going to be kept abreast from time to time so  
16 we will know what is going on? Because I frankly don't.

17 Senator Muskie. No changes have been made except those  
18 that have been considered in committee.

19 The Chairman. Well, I think it will be a proper discussion  
20 in this full Committee to have the discussions discussed that  
21 the Staff has had with various people. I would call that a very  
22 appropriate subject matter for discussion here.

23 Senator Muskie. It depends how thorough you want that to  
24 be.

25 The Chairman. I am not going to put a top or a bottom on

1 it, but it would certainly, if it takes -- how long have you  
2 been this morning, some of you?

3 Mr. Royce. We went from nine until two o'clock, Mr. Chair-  
4 man.

5 The Chairman. Well, let's say you have been four or five  
6 hours, and if it is taking you, the men that are close to this  
7 subject -- also, Ed, here, as our Chairman, very close to the  
8 subject -- if it takes you five hours to go through some mater-  
9 ial, why you can understand that Senator Gurney and others may  
10 have problems that take a few minutes.

11 Senator Muskie. Well, may I suggest, Mr. Chairman, that  
12 the procedure I have suggested would be most useful in that  
13 connection. For example, a great deal of the discussion that  
14 has gone on, and I have spent two hours of my own time on it,  
15 has gone on with representatives of the automobile industry.

16 This is why I suggested that that subject be held until  
17 the last, and at that point, I would be happy to ask the staff  
18 and would be happy to contribute my own input as to what we  
19 understand the position of the auto industry would be, so that  
20 the whole full Committee would have the benefit of it, and it  
21 seems to me that ---

22 The Chairman. Well, Ed, may I interject to say that I  
23 didn't mean that part of the bill. I understand on other sec-  
24 tions of the bill.

25 Senator Muskie. So it would seem to me that using that as



1 a pattern, that rather than ask the staff to give us a review,  
2 and it wouldn't be worth anything unless it were thorough, of  
3 every subject that has been discussed, that it might be more  
4 orderly if we get into the specific areas in the bill which con-  
5 cern the members of the committee, and then ask the staff to  
6 fill us in on any inputs that they have received from outside  
7 with reference to that subject.

8 Then when we finished with that phase of it, then if there  
9 is anything else that ought to be brought to our attention as a  
10 result of outside inputs, we could ask the staff to clue us in,  
11 and we could take them up, I think, rather than just a broadcast  
12 review, unrelated to the bill, because then we would have to go  
13 over it all over again, when we got to the specific provisions  
14 of the bill.

15 Maybe the staff could do this much, at this point,  
16 Mr. Chairman, ---

17 The Chairman. Yes.

18 Senator Muskie. May I ask, then, if you would, if you could  
19 summarize for us those portions of the bill, those sections of  
20 the bill which have been the subject of discussion with groups  
21 outside the committee.

22 Senator Jordan. May I ask a question before that,  
23 Mr. Chairman?

24 On the five things where you say virtual agreement was  
25 reached in the bill ---

1 The Chairman. Well, they were discussed.

2 Senator Muskie. There were no votes, but all questions  
3 that were raised were discussed, and apparently resolved, and  
4 we went on to other subjects.

5 Senator Jordan. Would it be possible, I don't mean at this  
6 minute, for the staff to give me and the rest of us, because I  
7 was not here, a list of the things that you wanted to substitute  
8 in the bill?

9 Senator Muskie. You mean in those sections?

10 Senator Jordan. Yes.

11 Senator Muskie. There were very few changes made, I think,  
12 but the staff ought to make them available to you, yes.

13 Senator Jordan. You go back through the bill, and you  
14 don't know what change was made, you don't know where it is. If  
15 they have got that, and I am sure they have, get one of the  
16 secretaries to do it after the meeting.

17 Mr. Royce. Yes, sir.

18 The Chairman. Senator Gurney, you have heard the suggestion  
19 of Senator Muskie in relationship to our procedure. I presume  
20 that you find that satisfactory, do you, sir?

21 Senator Gurney. Well, I must say I had a couple of con-  
22 versations going on here. I apologize. What did you say?

23 Senator Muskie. Well, in effect, what I have said ---

24 Senator Gurney. I am sorry.

25 Senator Muskie. It was this, Ed. Certainly, the staff

ought to clue us in on any discussions they have had that have raised questions as to provisions in the bill. I suggested that the best way to get at those discussions is to get into those areas of the bill which concern any members of the committee; then as we take up those sections of the bill, we would get the input as to the outsiders.

In addition, I have just asked Leon if he would give us in brief form the subject areas which have been the subject of outside discussions, so we may know which ones are controversial, and under attack in any way.

Senator Gurney. Well, that sounds all right.

Mr. Chaizman, I do understand that there have been some technical changes made in the bill by the staff. Are we going to get a clean committee print on that?

Senator Muskie. Well, to the best of my knowledge, the only changes that have been made -- the staff may have others under consideration, but the only changes that have been made are the ones we have already taken up and acted upon.

Am I wrong in that respect?

Mr. Royce. No; that is correct, Senator, but if I may respond, I think, to what Senator Gurney is referring to, the staff discussions this morning with committee staff and members of the personal staffs of members of the committee, we tentatively agreed on a number of language changes, growing out of the contributions from interested parties to various associations

1 and industry groups with whom we have been in contact, these  
2 changes, agreed upon by the staff, to be brought to the atten-  
3 tion of the committee.

4 Senator Gurney. I understand.

5 Mr. Royce. At this session.

6 Senator Gurney. Well, I think that is really what I was  
7 talking about.

8 Senator Muskie. Well, may I ask the staff if the procedure  
9 I have suggested is the most orderly way to get into those, or  
10 has the staff another suggestion to make?

11 Mr. Billings. Mr. Chairman, the staff would concur with  
12 your procedure, with the additional point that after we are  
13 through with what you suggested, that the staff could quickly  
14 take the members through those changes, and if anybody raises a  
15 red flag, because most of them are highly technical, if anybody  
16 raises a red flag, we could stop and go into some detailed  
17 discussion if necessary.

18 Senator Muskie. That is fine.

19 Now, would you give us a summary of the subject areas which  
20 you have had discussions on, with other people?

21 Mr. Billings. Mr. Chairman, we have received a number of  
22 communications relative to the bill, with many helpful sugges-  
23 tions.

24 Concern was expressed as to the nature of the manner in  
25 which control technology documents would be issued. Concern was

1 expressed as to the mandatory deadline on the implementation  
2 plans, three-year deadline. Concern was expressed as to the  
3 types of controls that might be used in an area, including land  
4 use, as provided in Paragraph (a) (2) (D) of Section 111.

5 A great deal of concern was expressed by the associations  
6 and so on regarding the public disclosure of emission data and  
7 other records and information.

8 A good deal of concern was expressed regarding the require-  
9 ment that the States hold public hearings to consider standards  
10 more restrictive than the national standards.

11 Then a good deal of concern was expressed as to the ques-  
12 tion of economic feasibility in the national standards of per-  
13 formance for new industries as to the manner in which the list  
14 of categories of stationary sources would be developed, and as  
15 to what exact sources would be covered within that provision,  
16 in addition to the consultation question that was raised at the  
17 last Executive Session. A number of helpful proposals were  
18 suggested in that section.

19 Again, concern was expressed regarding the public availa-  
20 bility of data. Under the national emission standards for  
21 selected air pollution agents, concern was expressed that this  
22 should not be a Federal, but should be a State task.

23 Concern was expressed as to the proposed prohibition of  
24 emissions of hazardous air pollution agents.

25 Concern was expressed as to the 72-hour requirement to

1 abate violation of emission requirement or standard. However,  
2 since that time, as the members will recall, that was modified  
3 to be 72 hours to initiate abatement action.

4 And a good deal of concern was expressed for the citizens'  
5 suit provision, ranging from deletion to major modification, and  
6 the Federal procurement provision, which was suggested to be  
7 deleted.

8 I think those are the major points.

9 Senator Muskie. May I ask whether there are any areas in  
10 the bill of particular concern to members that they would like  
11 now to turn to?

12 If there are not, then I would ---

13 The Chairman. Well, first of all, Leon has explained con-  
14 cerns here. Are these concerns that go to language in the  
15 draft?

16 Mr. Billings. Both to language and to policy, Mr. Chairman.

17 The Chairman. Well, whichever they are, and both, why I  
18 want them referred to in the draft itself, as we get into it,  
19 so that, you know, I can hear something in a generalization, but  
20 I want to put it with the lines here.

21 Mr. Royce. Mr. Chairman, ---

22 The Chairman. Yes?

23 Mr. Royce. Senator Muskie, I think that since the committee  
24 went through the print fairly carefully at the last meeting, up  
25 to about page 23, that the staff has recommendations for language

1 changes, some of which affect policy, and the staff has rejected  
2 some of, or would recommend against acceptance of some of the  
3 proposals from industry.

4 I think that it might be most expeditious if Leon would  
5 just take it from Section 109 on page 8, where the really rele-  
6 vant proposals begin, and in Section 109 on air quality criteria  
7 and control techniques, there were some substantive changes,  
8 Senator Muskie, that the staff would recommend.

9 We didn't cover these proposed changes.

10 Senator Jordan. What about Section 202(e)? Should we go  
11 that far back? That is the automobiles that you want to come  
12 to last?

13 Senator Muskie. Yes. That is the most difficult. We jump  
14 to 109 ---

15 Senator Jordan. I just wanted to be sure. We jumped to  
16 109?

17 Senator Muskie. May I suggest, Mr. Chairman, modification  
18 of procedure. Since Dick indicates that the first 23 pages  
19 contain technical changes that we ought to get to at some point,  
20 and since I can see no substantive questions of great contro-  
21 versy in those pages, I see no objection to our going through  
22 the technical changes with the staff at this point, and getting  
23 those 23 pages out of the way.

24 The Chairman. Well, I think that is the way it should be  
25 done. That's why I made the suggestion.

1 Senator Jordan. Starting on page 1? Where do we start?

2 Senator Muskie. We start on page 2.

3 Mr. Royce. Mr. Billings and Mr. Jorling are keepers of the  
4 master copy. It has been going through the various stages.

5 Mr. Billings. Mr. Chairman, on page 2, line 15, in between  
6 those two sentences, Administration requests inclusion of the  
7 following language, which I understand is being distributed.

8 Mr. Jorling. It is being distributed with two other pieces  
9 of language that are scattered throughout the bill, so that it  
10 is the one that has got handwritten on it, page 2, in that  
11 packet.

12 Mr. Billings. The Administration has requested this  
13 language in order to provide them with authority to purchase  
14 test low-emission vehicles for research and development.

15 Senator Gurney. Could you speak up? The acoustics are  
16 very bad here. I can't hear a thing, or understand anything,  
17 either.

18 Mr. Billings. The Administration has requested this language  
19 in order to provide them with authority to purchase for research  
20 and development low-emission vehicles. This would not be a  
21 procurement provision, but strictly a testing and R & D provi-  
22 sion.

23 Mr. Jorling. The same part will assist in the President  
24 carrying out his \$45 million program of developing a clean auto-  
25 mobile to compete with the manufacturers' development of such an



1 automobile. It would be helpful to them to be able to purchase  
2 what portions of existing automobiles and the like, so that they  
3 can experiment with devices and control systems to achieve  
4 emission control.

5 They have not requested additional appropriations for such  
6 purpose.

7 Senator Jordan. They shouldn't. With \$45 million to  
8 squander, I don't think they would need any more.

9 The Chairman. I have a feeling that this is important  
10 language. I think that it is necessary language, and I think  
11 the purpose is something that we can agree upon.

12 I would certainly want Ed and members to discuss it. If it  
13 is desired, and if at the end of any discussion, I will simply  
14 not take any vote on the language, but say strictly as your  
15 Chairman, "without objection," it will be so ordered as a part of  
16 the legislative intent .

17 Senator Muskie. That should be a large "C". There are so  
18 many C's there on page 2 that you can't tell which one it was,  
19 but this is large C in parentheses under large B in parentheses.

20 Senator Gurney. The proposed language is a large C, is  
21 that it?

22 Senator Muskie. Yes.

23 Senator Jordan. Line C, Section 104.

24 The Chairman. Ed, do you wish to discuss it?

25 Senator Muskie. It seems reasonable to me, Mr. Chairman.

1 The Chairman. Are there members who wish to discuss this?

2 Without objection, then, we will pass to the next matter,  
3 with the approval of members of the committee.

4 Mr. Billings. Mr. Chairman, unless there is objection, the  
5 staff will not review mere technical language changes which are  
6 mostly because of our own goof-ups and not in any way affecting  
7 the policy of the bill. There are a few legislative counsel  
8 changes we will be passing over as we go along.

9 The Chairman. I see no objection to passing over that type  
10 of item.

11 Mr. Billings. The next major change appears on page 10,  
12 line 11, Subsection (b), which is the requirement that the  
13 Secretary develop and issue to the States information on pollu-  
14 tion control techniques. In early drafts of the legislation,  
15 when expedition was considered important, the requirement of  
16 existing law that such documents be published simultaneously  
17 with air quality criteria was dropped.

18 A number of questions were raised about this. The staff  
19 consulted with the Administration. The Administration indicated  
20 that simultaneous publication would not in any way slow down the  
21 program, so the staff recommends reintroducing on line 11 the  
22 language: "Simultaneously with the issuance of criteria, the  
23 Secretary shall" ---

24 The Chairman. Leon, would that in effect reinstate the  
25 '67 Act?

1 Mr. Billings. Yes, sir.

2 The Chairman. Ed, did you wish to discuss it?

3 Senator Muskie. Mr. Chairman, I have no objection to the  
4 change, and recommend its adoption.

5 The Chairman. Are there questions?

6 Senator Jordan. Where does that fit in there?

7 Mr. Billings. In addition, Mr. Chairman, because now there  
8 will be pollutants for which criteria will not be required, the  
9 staff recommends the addition to Subsection (b) (1) of a sentence  
10 which states: "The Secretary shall also from time to time issue  
11 information on pollution control techniques for pollutants not  
12 subject to Subsection (a)" -- which would mean that pollutants  
13 subject to the Section 114, relative to selected air pollution  
14 agents, or pollutant agents subject to hazardous emissions  
15 control, would also have control technology documents issued for  
16 them.

17 Mr. Royce. This would apply to Sections 114 and 115.

18 Mr. Billings. Yes.

19 The Chairman. 114 and 115, the application. Is that cor-  
20 rect?

21 Mr. Royce. Yes, Mr. Chairman.

22 Senator Muskie. Is it clear that that sentence would  
23 include appropriate reference to the sections involved?

24 Mr. Billings. Yes.

25 Mr. Royce. That should be added, yes, sir.

1 Senator Muskie. Well, with that, Mr. Chairman, I would  
2 recommend the adoption of that language.

3 Senator Jordan. Would you read that again, now, just what  
4 that does?

5 Mr. Billings. "The Secretary shall also from time to time  
6 issue information on pollution control techniques for pollu-  
7 tants". The revised language would probably be "for pollutants  
8 subject to the provisions of Sections 114 and 115".

9 Senator Jordan. Let me see what 14 is here.

10 Senator Muskie. I think it might be helpful to Senator  
11 Jordan and other members of the full Committee who are not mem-  
12 bers of the Subcommittee if Mr. Royce should read the additional  
13 pollutants that would be covered by the language just read.

14 Mr. Royce. Senator Jordan and members, there are pollutants  
15 on which we never expect to have ambient air criteria standards,  
16 or it may be some time before they are, but there still needs to  
17 be control technology information published for the benefit of  
18 the industries involved, who will be controlled.

19 And the list that would be included under Section 114 is:  
20 arsenic, chlorine gas, hydrogen chloride, copper, manganese,  
21 nickel, vanadium, zinc, barium, boron, chromium, selenium, pesti-  
22 cides, radioactive substances, and possibly fluorides.

23 And in the hazardous substances, ---

24 Senator Baker. Dick, you mean that you don't expect cri-  
25 teria to be published because they are so dangerous or hazardous

1 that you wouldn't have criteria that would be acceptable in  
2 terms of the ambient quality of the air? Is that it?

3 Mr. Royce. Or in some instances, that they affect the  
4 ambient air in the immediate locality of the plant, but they are  
5 not lofted aloft as sulfur oxide or nitrous oxide, permeating  
6 ambient air over a wide region. Some of these are heavy metals  
7 that affect localized situations. And in this instance, there  
8 will be standards and there will be necessary control informa-  
9 tion, but not ambient air criteria.

10 Senator Muskie. Section 114.

11 Mr. Royce. Yes, sir, that is in Section 114.

12 Now, Section 115 includes those substances so hazardous  
13 that there is talk of either prohibition or extremely limited  
14 emissions, and that includes: asbestos, beryllium, cadmium, and  
15 mercury.

16 Senator Jordan. I think we are going to need to be extreme-  
17 ly careful what we get in here about pesticides, because the  
18 Secretary of Agriculture;--they are very involved in that right  
19 now, and the Environmental people are, and the Ecology people  
20 are, and everybody else, and they are even talking about fer-  
21 tilizer, and a lot of them are talking about things they don't  
22 know anything about and don't expect to find out, but we had  
23 better be careful how many agencies get to looking after pesti-  
24 cides.

25 Mr. Royce. Yes, sir, but this does not run to the

1 application of pesticides, but the emissions.

2 Senator Jordan. If you can't use it, it goes to it.

3 Mr. Royce. Yes, sir, but I mean, Senator Jordan, that the  
4 provisions of our bill do not deal with the application of pes-  
5 ticides, but the emission controls in a pesticide factory, just  
6 as we would have emission controls in a chlorine plant, or a  
7 steel plant.

8 Senator Jordan. You mean where they are manufactured, the  
9 fumes coming from it, from the factory.

10 Mr. Royce. Yes, sir, that is exactly it.

11 Senator Muskie. Now these are not listed by name in the  
12 statute, you understand. This is the best guess as to those  
13 that would be covered by that section of the statute.

14 Senator Jordan. I just want to know where you are going  
15 to put the fumes, if you can't turn them loose.

16 Senator Muskie. That is the thing we have to find out what  
17 to do.

18 Mr. Royce. That is the purpose of the language that Leon  
19 just read.

20 Senator Muskie. There is one place we want to be sure they  
21 don't end up, and that is in lungs.

22 Mr. Billings. Mr. Chairman, the next ---

23 The Chairman. Just before we pass that point, was there  
24 any further discussion?

25 Senator Cooper?

1 Senator Cooper. As I understand it, in this section you  
2 are dealing with substances which may be hazardous, but which we  
3 are not able, now, to determine whether they are hazardous.  
4 Is that correct?

5 Mr. Brayman. 115.

6 Mr. Jorling. 115?

7 Senator Cooper. Did I get ahead of you?

8 Mr. Royce. Yes, in a way, you did, Senator Cooper.  
9 Right now we are talking that we have suggested language which  
10 will require the Secretary to publish information on control  
11 techniques of all the substances that might be covered in the  
12 bill.

13 Senator Cooper. But we are not now talking about the sub-  
14 stances?

15 Mr. Royce. That is right, sir.

16 The Chairman. Is there any other comment?

17 Senator Jordan. I want to know one thing.

18 The Chairman. Yes, sir.

19 Senator Jordan. Earlier in this bill here, the business of  
20 publishing stuff is all right, but before there are any standards  
21 and things of what you are going to have people do, is there some  
22 provision here that these things are all going to be tested and  
23 proved that they can be done economically and without closing  
24 plants up before they say you can't do this?

25 I don't want to be a party to write it into the legislation

1 shutting a lot of plants down and doing a lot of foolish things  
2 that we don't need to do in a witch-hunt in this business, and  
3 it is mighty easy doing, because we are grabbing at a lot of  
4 straws in this bill here that we don't know a thing about, and  
5 probably not necessary at all, but they sound good, and I think  
6 we have got to be really extremely careful about it.

7 I am not saying that very lightly.

8 Mr. Royce. If I may respond to Senator Jordan, I think  
9 that question, sir, is addressed to Section 111, implementation  
10 plans, and then the standards sections that follow, and certainly  
11 the staff has given concern, consideration, to this question,  
12 and I know the members have.

13 It does not apply to 114, because that is the ---

14 Senator Jordan. You haven't got to 111 yet, have you?

15 Mr. Royce. That is right, sir.

16 The Chairman. Well, Senator Jordan, as you know, there is  
17 a difference of opinion of, I am sure, members of this commit-  
18 tee, in degree as to how far and how fast legislation of this  
19 kind should move, with the problem that you have presented as  
20 to the possible shutdown, resulting lay-off of workers, in ref-  
21 erence to matters that might come as a result of what we do.

22 That, of course, is a problem that we will have to deter-  
23 mine, and each man, of course, will necessarily, on this commit-  
24 tee, have that responsibility of determination. I think that  
25 generally, our purpose is as one, but our approaches might vary.



1 I may tell you now, I do not want to go off on another  
2 road that we are traveling other than the one that we are on,  
3 but I do want to say to the members of this committee that I am  
4 the only member of the committee that had the direct responsi-  
5 bility in connection with the Coal Mine Health and Safety Act,  
6 as a member of that Subcommittee on Labor, and that Committee on  
7 Labor and Public Welfare -- even those who were the most enthu-  
8 siastic for the bill, and I certainly was one, who joined in the  
9 drafting and the passage and the voting for such a measure, we  
10 have found, frankly, that now, they expect something to happen,  
11 within a month or three months, and it can't happen. You can't  
12 take inspectors, for example, and add 600 -- you can't train  
13 them, you can't do the screening that is necessary to make the  
14 inspections in the coal mines, and so we are having all over the  
15 area of several States, the shutdown of mines -- frankly, because  
16 of a failure of enough inspectors to carry out the provisions of  
17 the Act to which I have just made reference.

18 Now, the number of miners that are not now employed, I will  
19 not mention, it is in the hundreds in Kentucky, presumably, in  
20 the hundreds in other States--and in the hundreds in other States.

21 Now, the purpose certainly was worthy then and it is worthy  
22 now, but over and over again, in subcommittee and committee, and  
23 on the Senate Floor, I cautioned about what I hoped would not  
24 happen, but the realities might bring it into being, and that  
25 was, the failure to have from the 200 to the 700 in inspectors

1 hired and in the field.

2 Also, the equipment which we wrote into the bill which was  
3 necessary to purchase, it was not available. Five years.  
4 Senator Cooper came and worked with us on that matter.

5 Senator Cooper. I worked against you, too.

6 The Chairman. Well, I know you worked against us; I know  
7 you did. If you gentlemen think that I am discussing something  
8 that is extraneous today, I am not.

9 Senator Jordan. It isn't. It is very proper.

10 The Chairman. I am telling you about the importance,  
11 because it goes into the very area of this legislation, as  
12 against that legislation, and so at this point, some who were  
13 the most enthusiastic have indicated that in that instance we  
14 moved too far, too fast.

15 And I am only saying that that presumably is a question in  
16 the mind of Senator Jordan ---

17 Senator Jordan. That is exactly what it is.

18 The Chairman. And others, that we attempt to write a well-  
19 reasoned bill, which I know is the intent of Senator Muskie, and  
20 every member of the Subcommittee, and the full Committee, but I  
21 hope that I haven't indulged myself too far in talking about  
22 something that Senator Jordan has registered here today.

23 Senator Jordan. That is right, because I was one that held  
24 hearings on the coal mine situation because of the coal shortage  
25 in the coal mines that did shut down, and a great many of them

1 said that some of the things that were in the bill were not  
2 necessary to start with, and it didn't accomplish anything  
3 except to shut them down.

4 So that's one thing that I don't want to see done in this.

5 The Chairman. Well, Senator Cooper tried to keep us from  
6 making a mistake, but that's all I say at the moment.

7 Senator Cooper. Nobody was ever over there to listen to me.

8 The Chairman. I was. I was. I never failed you. I was  
9 there all the time. Every meeting.

10 I am not saying this facetiously, but seriously; I think  
11 this is a consideration that we all have as we move in areas of  
12 this kind.

13 Senator Jordan. I am not saying this critically of anybody,  
14 and I don't mean it to be, any way, and I am not critical of the  
15 apprehension, but this thing has gotten to be an emotional thing  
16 with the people. I have got sixth grade children coming up here  
17 to see me, saying they ought to take the automobiles off the  
18 road today. I said, "How are you going to get home?" They  
19 said they didn't know. I said, "You had better start thumbing,  
20 because you can't catch a ride if they are off the road."

21 But they are teaching them in school, they are getting them  
22 all wrought up about it, and we don't want to do anything foolish.

23 Senator Gurney. Everett, you might have said that was a  
24 good answer to that school bus problem; that stopped the bussing.

25 Senator Spong. Let's don't get into that.

1 Senator Muskie. I don't know -- everything else is in here.

2 Senator Jordan. I have said my piece. I feel that is  
3 certainly the attitude of everyone here.

4 Senator Cooper. Anything we have discussed so far hasn't  
5 raised any substantive question, has it? We are just improving  
6 a little bit as we go along, so far.

7 Senator Muskie. I may say just briefly that I don't think  
8 it can be said that anything that is in here has been written  
9 in casually. The Subcommittee has spent long hours and days  
10 and weeks and, I guess accurately said, months, to put this bill  
11 together. That isn't to say, you know, that it isn't subject  
12 to improvement. Of course, it is. But if there is something  
13 foolish in here, it isn't because it was done hastily or without  
14 thought and deliberation.

15 I will say this, in addition --speaking for myself only,  
16 and nobody else --that it is my impression that what is needed  
17 to deal with very real dangers is a stretching of the possibili-  
18 ties. We have got to find ways to do things that we are told in  
19 many, many instances cannot be done, and the reason we have got  
20 to find those ways is because there is evidence that the public  
21 health is involved.

22 And wherever we thought the public health was involved in a  
23 way that required that new technological changes somehow should  
24 be prodded into existence, we have tried to write some public  
25 policy to achieve that. And I think we ought to say that clearly

1 and openly, so that nobody starts sailing under any false colors.

2 Now, it is difficult to draw precise lines in those  
3 instances, because those who will be required to provide the  
4 technological know-how tend to resist, and we have to try to  
5 form independent judgments as to what may be possible. And they  
6 are not of particular assistance to us in forming those judgments.  
7 Nevertheless, they have points of view that deserve to  
8 be listened to.

9 We have listened to them, the staff has listened to them,  
10 and we try to identify every one of those areas for the benefit  
11 of the committee, so that when votes are taken, they are taken  
12 with our eyes wide open as to what each side of the issue may be  
13 in each case.

14 I don't think we have such an issue in the language that  
15 is now before us. It may be in the related language in Section  
16 114 and Section 115, when we get to it. Right now, all we  
17 are asking for is language to make it clear that as to the pollutants  
18 covered by those two sections, that the Department will  
19 provide and publish such information as is available as to the  
20 technological possibilities that exist at that time.

21 This language does not ask for anything that doesn't exist,  
22 and I think it is a technical addition to the language that  
23 ought to be included, and really, it would be a protection for  
24 those who may think we are asking too much.

25 Senator Jordan. That's reasonable enough. There is nothing

1 wrong with that.

2 Senator Spong. Mr. Chairman, I think we should ask for  
3 almost the impossible, but not without acknowledging in some way  
4 that we recognize that.

5 Now, we have talked about the Mine Safety bill. That has  
6 been given here as an example, and I found, I was one of those  
7 who supported the bill -- I didn't have the benefit of the com-  
8 mittee hearings to the extent that I should have, but to find  
9 that we were requiring equipment that hadn't even been manufac-  
10 tured, and you couldn't get, I think, made all of us look a  
11 little foolish.

12 And so what I say is that we should require more than many  
13 say can be done, but at the same time, I think we ought to recog-  
14 nize in this bill that some of it might be extremely difficult  
15 --and not pretend that we don't recognize that fact.

16 Senator Muskie. Yes, I would agree with that. I don't  
17 want any blind votes here. I think this is too serious, too  
18 important. The difficulty of defining that precise line, of  
19 course, is that many industries that are affected do have in  
20 motion technological research that has promise, and they are  
21 reluctant to reveal the details to any outsiders for obvious  
22 reasons; you know, their proprietary rights are involved, and  
23 they are also cautious as to projecting the possible success of  
24 those efforts, if they were to reveal them. So it is a difficult  
25 area in which for us to operate.

1 Senator Spong. I have some sympathy with what Senator  
2 Jordan has said, but the emission in this problem is not con-  
3 fined to one side of the issue.

4 Senator Muskie. Exactly; it is on both, or on all three.  
5 It is all around it.

6 Senator Gurney. Ed, what concerns me a bit here is a com-  
7 munication like we received from this Manufacturing Chemists'  
8 Association, and I guess all members of the committee received  
9 this communication, as well as the staff people.

10 Here are nine pages of suggested changes they make, nine  
11 of their pages, and several occur sometimes on each one of their  
12 pages. Of course, they point out that they have never seen the  
13 bill before, this is just a quick reaction to it. They would  
14 hope that they would have more time to look at it further.

15 Well, my question is, now have we really gone into this,  
16 and taken a look at what they have suggested, and analyzed these  
17 carefully? Because I have looked at some of these, without the  
18 benefit, of course, of the expertise of the Subcommittee, but  
19 some of the suggestions seem to make some sense to me.

20 And it bothers me that we have so many suggested changes  
21 from this Association. I would think some of them must be  
22 viable. They can't all be obstructionists.

23 Senator Muskie. May I say we are now in the process of  
24 going through the bill for the purpose of identifying those  
25 areas and the staff recommendations. That's the process we are

1 involved in now.

2 Mr. Royce. And the staff recommends some of them, some of  
3 MCA's proposals, and in those that the staff doesn't recommend,  
4 Senator Gurney, any member who doesn't understand the staff's  
5 recommendations, we will explain why we don't recommend them, or  
6 why we recommend against them.

7 But they are from MCA, from Union Carbide, from auto manu-  
8 facturers, from the utilities; these are the proposals that Leon  
9 is going to take up, as we move through the bill.

10 Senator Muskie. We will make an effort to get to all of  
11 these. Now, of course, you could stretch out this process  
12 interminably. At some point, we have got to act on the bill.  
13 This, we are in the process, we have begun now, we are on page 10.

14 I think we will eventually touch upon the significant ques-  
15 tions that have been raised in these various communications,  
16 insofar as the staff is able to identify them.

17 Incidentally, I might say that the very language we are now  
18 discussing was language similar to what was included in the 1967  
19 bill, at the request of MCA. They brought it -- well, we didn't  
20 draft it because they requested it, but they brought it to our  
21 attention, and we found it meritorious and included it, and  
22 that's why we wanted to include it here.

23 The Chairman. Before we move on, Ed, I only wanted to indi-  
24 cate by what I have said before that I was responding to Sena-  
25 tor Jordan's observation, because I think it is a concern that



1 we have generally, and I restate for the record my commendation  
2 of you and all those who work at the subcommittee level, and  
3 the staff levels, and I want the record always very clear on  
4 that.

5 Senator Muskie. We understand that, Mr. Chairman, but  
6 thank you.

7 Senator Jordan. I think it is better to consider, some of  
8 you were here when we passed the Humane Slaughter Bill. You  
9 were. And they passed a bill how to do it, and they didn't have  
10 the stuff to do it with, and they had to give them a year's  
11 extension. I had to go get an amendment through, because they  
12 hadn't even manufactured it yet.

13 So I just don't want to do something that is going to run  
14 us into that same thing again, because it could be really seri-  
15 ous.

16 Senator Muskie. I think that we will get to those areas,  
17 and I understand Senator Jordan's concern, and I ask the staff,  
18 in every instance, to try to alert those who have that concern  
19 especially, when we reach those points, so that we won't pass  
20 over them blindly. I don't want to sell anything under false  
21 colors here. I want everybody to know what we are doing.

22 Senator Jordan. Let me make one observation again. I  
23 don't want to do all the talking here. Senator Gurney brings  
24 up, I have not seen what the Manufacturing Chemists brought  
25 before, but I think we ought to be taking into consideration

1 very seriously, because they are the people that make these  
2 things, and they have got the factory, and they have got more  
3 know-how about it than I have got, by a long shot, and they are  
4 certainly interested in anything that we are going to write into  
5 this legislation.

6 So I think we ought to consider them as we go down. I  
7 heard some of these, somebody not long ago, talking about this  
8 one Bank Holding bill. Well, I am not talking about the merits  
9 one way or the other, but they said they had bankers on the com-  
10 mittee. Well, I sure wouldn't want a blacksmith writing my  
11 banking bill.

12 If you don't get bankers on a committee that know how to  
13 write a bankers' bill, I don't know whom you would get.

14 Senator Muskie. I am the only blacksmith on that committee.

15 Senator Jordan. I am talking about that seriously. You  
16 have got to have people that know that business to help you  
17 write a bill, because it pertains to them; that is their life  
18 and their business, and the technical knowledge, all of it, is  
19 there in their possession. And I think it ought to be considered.

20 Senator Muskie. I think their point of view was well rep-  
21 resented.

22 Well, shall I ask the staff to proceed?

23 Is there any -- getting back to the language we were dis-  
24 cussing that is at the bottom of page 10, line 22, the addition  
25 of a sentence would indicate that control technology information

1 would be issued with respect to Sections 114 and 115 as well as  
2 this one. I take it there is no objection to that particular  
3 language.

4 I will ask the staff to move on to the next.

5 Mr. Billings. Page 11, line 22, the recommendation of  
6 Manufacturing Chemists, after the word "standards", "with such  
7 modifications as he deems appropriate", which we should have had  
8 in there in the first place.

9 Senator Jordan. When he says "he", -- HEW, the Secretary?

10 Senator Boggs. That is one of their recommendations.

11 Senator Jordan. Yes.

12 Senator Muskie. Incidentally, may I ask members of the  
13 committee and staff to bear something in mind, as our delibera-  
14 tions are discussed, as inevitably they are, outside this room,  
15 although we ought not to, and I hope that we make an effort not  
16 to, until the bill is in final form; nevertheless, I saw in a  
17 report of our last Executive Session a paragraph that character-  
18 ized the work we did in the last session as "a weakening of the  
19 bill".

20 Now, I can't recall anything that we did in the last ses-  
21 sion that weakened the bill. So if we would avoid, and that may  
22 be simply a newspaper reporter's interpretatinn of what was told  
23 him, but in any event, let us be sure that we don't characterize  
24 any of these changes as either strengthening or weakening the  
25 bill.

1 A lot of this language that we are adding is for the pur-  
2 pose of clarification, to make it more administratively viable,  
3 or for some other constructive purpose, and has no relation to  
4 weakening or strengthening.

5 And I have in mind the kind of an amendment we are talking  
6 about now. It was proposed by industry; so far as I know, it  
7 doesn't have the effect of either weakening or strengthening  
8 the bill, but it does help to make it more workable.

9 And with that suggestion, I will ask the committee whether  
10 or not there are any questions about this addition. I think it  
11 makes sense. In other words, after there have been comments,  
12 solicited in accordance with lines 19, 20, and 21, obviously, the  
13 Secretary ought to be in a position to modify the proposed  
14 national ambient air quality standards in response to those  
15 comments. And that's the objective of this language and I would  
16 recommend its approval.

17 Senator Jordan. Down on line 22 on page 11, "'Such pro-  
18 mulgation shall occur no later than 90 days after publication of  
19 such proposed national ambient air quality standards" --- suppose  
20 the equipment is not available to meet a standard he has set up.  
21 What are you going to do?

22 Senator Muskie. Well, you would have to take that into  
23 account. But that's right -- This would not relate to the ambient  
24 air quality standard in any event.

25 Senator Jordan. What does it relate to, then?

1        Senator Muskie. Well, the national ambient air quality  
2 standards will be issued based upon the criteria documents which  
3 have been published.

4        Now the criteria documents identify the effects of various  
5 air pollutants upon health, and all other aspects of the public  
6 welfare. Now what we have done in this bill is to provide that  
7 he will announce after the criteria documents have been issued,  
8 the national ambient air quality standards that relate to health.  
9 Now that is simply an identification of the health effects.

10       Wait, let me finish. The implementation of those standards  
11 that is, the actual plan for control of emissions, in industries  
12 will be covered by the implementation of plans, which is covered  
13 in Section 111, beginning on page 13. The standards simply  
14 identified the health levels of groups.

15       Senator Jordan. All right. I understand that. That is  
16 all right.

17       Senator Muskie. Okay. Is there any objection to that?  
18 That language? If not, we will turn to the next one.

19       Mr. Billings. On page 12, because of the changes made rela-  
20 tive to control techniques documents, conforming changes have  
21 to be made on line 1, after the words "air quality criteria",  
22 and on line 4, after the word "criteria", to recognize the pub-  
23 lication of those documents.

24       Mr. Chairman ----

25       Senator Muskie. That is a technical change.

1 Mr. Billings. Mr. Chairman, the next is one that you posed  
2 at the beginning of the session. Both the Environmental Action  
3 people and the Manufacturing Chemists suggested on line 12 that  
4 the words "health of persons" be changed to "public health".

5 Senator Muskie. Well, you heard the conflicting interpre-  
6 tations of the phrase. We have included "health of persons"  
7 because we thought -- and this was following considerable deliber-  
8 eration and discussion -- because we thought that more precisely  
9 indicated that what we were concerned about is the health of  
10 people, and public health more broadly might include the well-  
11 being of people, for example, and that is much broader, and since  
12 we were trying to focus on health, in the light of all of the  
13 difficulties of achieving an enhancement of air quality, we  
14 thought that we ought to focus on health, the health of people,  
15 as the critical factor that the bill ought to be directed to.

16 That is why we changed "public health" to the "health of  
17 persons".

18 So we think, in other words, that it is more restrictive  
19 than "public health" would be.

20 Senator Baker. I think you ought to leave it the way it is.  
21 I don't think that anyone would dispute that public health has  
22 connotations beyond the literal interpretation of the phrase.  
23 It has been embedded in Statute and Decision law so long that it  
24 covers such a broad spectrum of concern that it is much greater  
25 than that toward which this bill is directed, so I recommend we

1 leave it the way it is.

2 Senator Muskie. And I would like to note again that the  
3 recommendation for change has come from both industry and the  
4 environmentalists, for diametrically opposite reasons.

5 Senator Spong. The only reason I disagree with my friend  
6 from Tennessee is that we have few opportunities like this.

7 Senator Cooper. Mr. Chairman?

8 The Chairman. Senator Cooper.

9 Senator Cooper. I know this has been discussed many times,  
10 and I am not going to prolong the discussion, but it seems to  
11 me that "public health" connotes some kind of a standard, or  
12 a medium. "Health of persons", as I would view it, contem-  
13 plates the health of any person. You might have a standard  
14 which would generally meet the requirements of public health,  
15 the most number of people, but if it means any person, you  
16 could have a situation -- I don't want to exaggerate, but you  
17 could have a situation where a few people, aged, bad health,  
18 sick, emphysema, pulmonary problems, working in an area which is  
19 particularly polluted, and how can you meet all of the problems  
20 of individual persons wherever they may be?

21 I know you would like to have air that would be the best  
22 and cleanest for any person, but I don't know how you can do  
23 that, unless what you are actually going to say is that your  
24 standard has got to be so strict, so precise, that there is  
25 nobody it can reach, A, B, C, any place. That is pretty difficult

1 to achieve, I think.

2 First, I wanted to know, does that mean that? It is going  
3 to be difficult enough for them to achieve standards which would  
4 protect the overwhelming majority of people, and I think that's  
5 what we are trying to do. At least, that's a good goal to begin  
6 with. But if we are going to take care of every specific situa-  
7 tion, I think it is pretty difficult.

8 Senator Muskie. Well, let me point out first, John, that  
9 one of the alternative phrases that we rejected was "the health  
10 of any person". We rejected that, to indicate that ---

11 Senator Cooper. I remember that.

12 Senator Muskie. --- we weren't focusing that precisely.  
13 Now, I don't think you can state a mathematical formula.

14 Senator Cooper. Yes.

15 Senator Muskie. The health of 25 percent of the people of  
16 an area might be seriously jeopardized so that their interests  
17 ought to prevail over that of the 75 percent who aren't injured,  
18 or it might be 49-51. What I would think the report ought to  
19 include, this is what I have had in mind from the beginning, is  
20 perhaps some further definition of this phrase, to indicate that  
21 we have in mind groups that are especially sensitive. For  
22 instance, the very old and the very young, both of whom are the  
23 least mobile of our people, ought to be protected.

24 Now you may want to go beyond that, but there is no ques-  
25 tion but what the very old and the very young are especially



1 sensitive to air pollutants. If you would set the standard at  
2 the healthy, vigorous man of average age, who might be 35 -- I  
3 don't know what the average age now is -- that would protect  
4 very few of the people who need protecting.

5 So I don't think an average across the whole populace is  
6 sensitive enough to the health problem.

7 Senator Cooper. I see that. But I agree with you that  
8 some discussion ought to be in the report, that we can't identi-  
9 fy every single individual.

10 Senator Jordan. May I just put in a thought? I have no  
11 diseases. I am just as clean as the driven snow -- drifted a  
12 little bit, but otherwise ---

13 The Chairman. Senator Baker, you wished to be recognized?

14 Senator Baker. I want to hear the rest of what he started  
15 to say.

16 Senator Jordan. Well, there are people who have asthma,  
17 and there are people who have, what is it, allergies, hay fever,  
18 Well, now, it is a definite disease with them, and in certain  
19 areas in certain times of the year, they are really in trouble.

20 The Chairman. That's not pollution, that's pollen you are  
21 talking about.

22 Senator Jordan. I know, but it pollutes.

23 The Chairman. You see, that is out in the country where the  
24 air is pure, but that pollen causes trouble.

25 Senator Jordan. I know it, but we don't want to get so --

1 I don't mean legislate against that, but I mean, to put it so  
2 tight that you have a standard, that the fellow says, "Well,  
3 that is what was causing my trouble. It wasn't the ragweed this  
4 fall, it was that fellow's smokestack."

5 And it is mighty easy to define it so close that you get  
6 it down to one individual, or a dozen people. The language  
7 doesn't make any difference to me in that particular segment,  
8 but I suspect public health would come nearer taking the average  
9 of everybody, and if public health people are going to have any-  
10 thing to do with administering this, they probably like that  
11 term better.

12 Senator Muskie. Well, if you put in "public health", you  
13 may find them protecting plants and animals and insects, a  
14 national ecology effort, if you would like that.

15 The Chairman. I tried to recognize you.

16 Senator Baker. I think the reason I am making more to-do  
17 over this than it deserves, maybe, is because I read some three  
18 years ago a report from the Presidential Commission on the State  
19 of the Public Health, in which the opening paragraph was that  
20 the public health is a difficult term to describe. It implies  
21 the absence of public illness.

22 But the Commission rejected that, and said that public  
23 health means more than the absence of public illness. What it  
24 means is the effort of the United States to create a better state  
25 of health for the people of the United States than just the

1 absence of illness.

2 Now that came to mind when I said a moment ago that "public  
3 health" has taken on such connotation and specificity in statu-  
4 tory and governmental language that unless we modify here or  
5 clearly define our purpose in the report, I think we are saying  
6 things that we really don't mean.

7 I think we can handle it very quickly by saying "the pub-  
8 lic health generally", or by explaining it in the report, or  
9 by saying "the health of persons generally", because in either  
10 event, we are injecting an element of subjectivity that author-  
11 izes someone to decide what does comply with the requirement  
12 of the health of persons or of, quote, "public health" in a  
13 generic sense.

14 I don't think it takes much. But I think we can handle it  
15 either in the report or in the language here, and I do only  
16 caution against the use of the unadorned "public health", because  
17 I think it means things far beyond the absence of public illness.

18 Senator Gurney. Mr. Chairman?

19 The Chairman. Well, I would think that this should be  
20 handled in the report. That is my own personal feeling. But I  
21 wouldn't hold to that.

22 Senator Gurney. Ed, is there some reason why only the word  
23 "health" is used on line 12, and "public health" is used on  
24 line 16? Are we being inconsistent there?

25 The Chairman. Ed, I couldn't hear.

1 Senator Gurney. Well, in this very page we are discussing  
2 here, we are talking about only the use of the word "health" on  
3 line 12. On line 18, we use "public health".

4 Senator Muskie. Well, the difference is this. In the  
5 bill, the technique of control is to do two things: first, to  
6 set standards that are related to health, health of persons.  
7 But beyond that, there are other effects that cover the whole  
8 broad range, plant and animal life, economic, and so on. And  
9 many of those effects would require a more stringent control  
10 than health would.

11 We have identified those additional effects as effects that  
12 ought to be the subject of long-term goals, and we refer to  
13 them as related to the public health and welfare, and there is  
14 no time table for those. The air quality regions are free to  
15 adopt whatever time tables or none, as they may deem in their  
16 interests.

17 There is no national time table related to public health  
18 goals. And that is the broad public health and welfare phrase.  
19 That is the only phrase in which that is used, I think, in the  
20 bill, unless we have slipped somewhere. So that is the differ-  
21 ence between the two.

22 Senator Gurney. Well, it does sort of indicate that we are  
23 talking about two different standards of health. That's what I  
24 am saying.

25 Senator Muskie. That is right, and we think the first is

1 more restrictive, and the second is broader. If we are wrong,  
2 then, of course, we ought to identify it.

3 Incidentally, one of the reasons we were particularly care-  
4 ful about this is because of the definition of public health  
5 that the Surgeon General gave in testimony before this subcom-  
6 mittee two or three years ago, which in effect said that being  
7 healthy is something more than being unsick; that it involves  
8 also a state of general wellbeing. So that would include just  
9 about everybody, especially in these times.

10 And I don't think we are about to try to make everybody  
11 happy by reason of this bill.

12 The Chairman. Ed, I do recall that the World Health Orga-  
13 nization said that the health of a person involved not only the  
14 physical but the mental as well; am I wrong in that?

15 Senator Muskie. Even social wellbeing. Even his social  
16 wellbeing.

17 The Chairman. Yes, it does lend itself to a broad brush,  
18 doesn't it?

19 Senator Muskie. We wanted to avoid that.

20 Senator Jordan. May I ask another question? I am just  
21 trying to get this behind me, before we get any further.

22 Does this bill provide that you have to have the same stan-  
23 dards everywhere in the United States?

24 The reason I am asking that question, the reason I am want-  
25 ing to come back right quickly, Los Angeles now has got a

1 standard now that is not required in a great many other places,  
2 because they have got a peculiar problem there. Washington  
3 City has probably got the same problem, not quite as bad; but  
4 in a great many areas, that is not a problem at all, because  
5 they are isolated way out in the country, where there is nobody  
6 much around; multiply the pollution of an area which is heavily  
7 populated, it wouldn't affect a small area at all.

8 Does this make any provision for that kind of a condition?

9 Senator Muskie. What this bill does is to say that in  
10 every region of the country, air quality will not be below that  
11 level of quality which protects health. Now, in case of the  
12 so-called rural areas or the open spaces of the country, the  
13 standards which are already in existence could be much higher  
14 than that. In the case of the heavily urbanized areas, they are  
15 going to have to do something about bringing their areas up to  
16 that stage.

17 But its health is the standard across the board. Those  
18 areas that already have air that is purer than that will want  
19 to develop plans, and this gives them the opportunity to do  
20 that, which will protect that quality into the future, consistent  
21 with their requirements to grow and so on.

22 With respect to those areas that have dirtier air than that  
23 standard, they are going to have to exert a much greater effort  
24 to get to that quality, and that is what the implementation  
25 plan section is all about, and this gives them the opportunity

1 to enhance their air quality, not only up to the health standard,  
2 but to any higher standard that they may wish.

3 The national policy doesn't require them to go above it;  
4 they can go above it, if they wish. And that is the flexibility  
5 that we have written into the law.

6 We felt that the one standard that we could justify on a  
7 national basis was the health standard. We didn't try to make  
8 it any purer than that on a national basis, but we felt that was  
9 the minimum. In other words, we didn't think, Everett, that we  
10 could say to the people of any region of this country that "We  
11 know that your air is unhealthy, but we can't do anything about  
12 it for you, for an indefinite future." We think that within  
13 five years, you ought to have air that is healthy to breathe.  
14 That is the whole philosophy of this bill, and answers some of  
15 the earlier questions that you asked.

16 We are not asking you anything purer than that, but for  
17 health, we think that anybody in this country ought to be able  
18 at some reasonable point in the future to be able to breathe  
19 healthy air, and that isn't going to be pure air.

20 Senator Jordan. Just one other question, getting all of  
21 these things out of my mind.

22 Who is going to set the standards and say they are pure  
23 enough?

24 Senator Muskie. Well, the criteria documents, and there have  
25 been five issued up to this date, already tell us, under the '67

1 Act, the various effects of air pollutants, that is, the effect  
2 on paint, the effect on human health, the effect on plant life.  
3 They are all spelled out in these criteria documents, so that  
4 if ---

5 Senator Jordan. They are already in existence? Or are  
6 there some new ones in this bill?

7 Senator Muskie. No, this doesn't set --what this bill does  
8 is tell the Secretary to finish that job of identifying the  
9 effects of pollutants as of what is the deadline for that?

10 Mr. Billings. Thirteen months.

11 Senator Muskie. Thirteen months, and then the five-year,  
12 or the three-year-plus time for processing; the three years-plus  
13 time for processing time-period begins to run from the time that  
14 those new documents are issued.

15 So that all pollutants ought to be covered within -- what  
16 is the total, 55 months?

17 Mr. Billings. Fifty-five months for existing pollutants,  
18 and -- 61.

19 Senator Muskie. Some five and a half years from the date  
20 this bill is passed, these pollutants will all be identified and  
21 subject to standards.

22 Senator Jordan. Now, these standards are going to be tested  
23 out and proved that they can be met before they are issued?

24 Senator Muskie. The deadline will apply across the board,  
25 and the air quality regions must produce implementation plans to



1 meet that deadline.

2 Senator Jordan. What, though?

3 Senator Muskie. If it appears not later than a year before  
4 the expiration of the deadline, the Governor of any State can  
5 apply to a Court on the basis that the deadline can't be met,  
6 and the Court, upon a finding, the Court can grant relief, can  
7 extend the deadline for not more than one year at a time, if the  
8 Court finds, and let me read it:

9 "The Court, in view of the paramount interest of the United  
10 States in achieving ambient air quality necessary to protect the  
11 health of persons, shall grant relief only if it determines  
12 such relief is essential to the public interest and the general  
13 welfare of the United States, after finding --

14 "(A) that substantial efforts have been made to protect the  
15 health of persons in such region; and

16 "(B) that means to control emissions causing or contribut-  
17 ing to such failure are not available or have not been available  
18 for a sufficient period to achieve compliance prior to the  
19 expiration of the period to attain an applicable standard; or

20 "(C) that the failure to achieve such ambient air quality  
21 standard is caused by emissions from a Federal facility for  
22 which the President has granted an exemption pursuant to Sec-  
23 tion 119 of this Act". That is the relief provision that grants  
24 extensions of not more than a year at a time. If they want fur-  
25 ther extension, the same procedure is available.

1 Senator Baker. Now, Mr. Chairman, may I make a statement  
2 in that connection, that I think we ought to fully understand?

3 That still does not mean that there may not be certain cir-  
4 cumstances where certain plants will be closed down?

5 Senator Muskie. That's right.

6 Senator Baker. We ought to face that fact. That in some  
7 instances it will be impossible to provide the control necessary  
8 in the appointed time, or within, and it will be impossible to  
9 meet the conditions precedent to the granting of an extension.  
10 I can't think of what those will be at the moment, but we have  
11 got to face the fact that it is possible, that certain industries  
12 will be prohibited industries.

13 Senator Boggs. What would be an example of that, just off  
14 your mind?

15 Senator Baker. Off the top of my head, I think probably one  
16 of the chemical or nuclear categories might fall between those  
17 cracks. It would be impossible to protect the health and welfare  
18 of the people while the plan was extended, and that there were  
19 no present methods of technology to protect us.

20 Senator Boggs. Some unusual thing. It is not normal.

21 Senator Baker. It would be an exordinary, unusual thing.  
22 We ought just frankly face the fact that there will be some cases  
23 where it is not permissible to continue.

24 Senator Boggs. Yes. That's my point.

25 Senator Jordan. Well, it seems to me that a basis of the

1 criteria setup would be where you covered an industry, there are  
2 a great many industries, just alike. Any power plant is exactly  
3 the same thing, if it burns coal. They are all alike. If you  
4 issued a regulation that shut down one power plant, that would be  
5 a different proposition, but if you shut them all down, there  
6 would be a whole lot of difference.

7 Senator Baker. Yes, we can't permit ourselves to be in the  
8 same shape with the generation of electricity, for instance, that  
9 we find ourselves with mining coal. That is, we can't legislate  
10 a patent impossibility that can't be fulfilled for five years,  
11 but we have built an escape clause in here that does create a  
12 different situation.

13 Senator Gurney. Let me ask just a general question, Ed, so  
14 I can understand the thrust of the legislation a little better.  
15 As I understand, there are going to be national standards that are  
16 promulgated, and then, of course, there are going to be state  
17 plans in each state.

18 My question leads to the latter thought, why individual  
19 plants -- suppose, for example, you have got a paper mill. We  
20 have got one down in Jacksonville. You have them in Waterville,  
21 Maine, where I used to live, and where you live. Wouldn't it be  
22 pretty much the same sort of solution for paper mill pollutants  
23 in Jacksonville and Waterville?

24 Why don't we have a national standard to take care of a pur-  
25 pose like that, rather than 50 state plans? I am simply asking

1 this for information.

2 Senator Muskie. Well, we have, with respect to -- I don't  
3 know if you have seen this sheet, but this sheet which I dis-  
4 tributed to the subcommittee lists three categories of air pollu-  
5 tion agents. The first category described is "generally pervasive."  
6 The second category described is "limited pervasiveness." The  
7 third is "hazardous."

8 Now the generally pervasive pollutants are subject to ambient  
9 air standards under the bill. The other two are subject to direct  
10 control, as national standards. So that if an industry emits  
11 those, it is subject to national emission standards, in effect.  
12 With respect to the generally pervasive, the reason it is treated  
13 that way is because, well, by definition. These are pollutants  
14 that are generally pervasive and color the ambient air in a whole  
15 area, in a whole region, and mingle with others.

16 We think that if such an area -- we have got to be concerned  
17 with the general quality of the air, if we are really to get at  
18 the breathability of the air from a health standpoint.

19 Now we think that the result of any one of these three types  
20 of controls will be similar controls for similar industries, but  
21 you see, a given industry may conceivably emit pollutants that  
22 fall in different ones of these categories and you can't neces-  
23 sarily control it by industry, you see. I don't know if the staff  
24 could give us an illustration of that or not, but it is conceiv-  
25 able that this would be so.

1 But in any case, as to the generally pervasive ones, which  
2 mingle with pollutants from other sources in a given community,  
3 it seemed to us that what we have to get to is the ambient air  
4 quality, because that is what determines the breathability of the  
5 air.

6 Now I think the paper mill pollutants would by and large  
7 fall into "generally pervasive," and would be subject to ambient  
8 air quality standards, but I think that the net effect of that  
9 on paper mill operations in every part of the country would be  
10 about the same. I don't think there would be any advantage to a  
11 paper mill moving from one part of the country to another, or  
12 settling in one part of the country rather than another.

13 Senator Gurney. But the state plans would be, then, the  
14 reason for those are that in some instances, it would differ from  
15 state to state, your pollution control plans.

16 Senator Muskie. Well, Leon may want to say something fur-  
17 ther on that point that might be helpful.

18 Senator Jordan. I may say something on that point about the  
19 very thing he is talking about, paper mills?

20 The Chairman. Yes, sir, go ahead.

21 Senator Jordan. There is a paper mill in Cayton, North  
22 Carolina, one of the big plants, and when you get within about  
23 five miles of it, you can smell it. The aroma is nothing to  
24 brag on, certainly. But the people in town say, "There's nothing  
25 bad about that smell. That's perfume. When that stops, we're

1 out of a job." And they say you can't do these things without  
2 getting some odor from it, which, until you get used to it, is  
3 not very pleasant. But they claim -- and the people live there  
4 to be just as old as anybody else -- that it does not affect their  
5 health, but it is not a very pleasant odor, and those things  
6 have to be considered when you are setting up things.

7 You have, "You have got to take the odor out." Well, how  
8 are you going to do it? These things always relate to what you  
9 are trying to do, and if it doesn't affect the health, I don't  
10 think the odor ought to have anything to do with it. But you  
11 have got a lot of paper mills, and they are all in the same fix.

12 The Chairman. Well, Senator Jordan, and then I will have  
13 Leon answer, Senator Jordan, of course, several of us are  
14 familiar with the problems of pulp and paper companies.

15 Senator Jordan. Right.

16 The Chairman. And in West Virginia, we have two large opera-  
17 tions of that type that employ several thousand workers, one at  
18 what we call Luke, Maryland, which is Piedmont, West Virginia,  
19 in effect, and one in Covington, Virginia, which of course is,  
20 in effect, several areas in West Virginia. All that I say at  
21 this time is that the odors are bad.

22 Senator Jordan. That's right.

23 The Chairman. I know this, because I have experienced it  
24 over and over again. I do want to say that the odors are not the  
25 problem so much. The odors will continue, to a degree, because

1 of the very type work that is being done, but there are programs  
2 of improving the pollution controls, which are constantly being  
3 installed, at least they are at these two plants of the West Vir-  
4 ginia Pulp and Paper Company. They are expending money. They  
5 are attempting to improve the pollution that comes into the air.

6 Senator Jordan. They spent millions of dollars trying to  
7 get rid of the water that goes out, which does pollute, killed  
8 every fish in the river, and they are remedying that.

9 The Chairman. Yes, that's right, they have in the Potomac,  
10 and also in the Green River.

11 Leon, I think -- Ed, didn't you ask Leon to go into some  
12 matters?

13 Senator Muskie. Yes, I did. I wonder, Mr. Chairman, if  
14 I might intervene, to interject another question.

15 The Chairman. Surely.

16 Senator Muskie. I am scheduled to make a statement on the  
17 floor at 4:30. That will take me until 4:45. Leon has matters  
18 here that ought to be discussed with the committee and I know  
19 that the committee is interested, because one of them at least  
20 was raised last time, and I would like very much to continue as  
21 late as we can, tonight, for this reason: I had said, a week or  
22 so ago, that we were going to try to get this bill out by Labor  
23 Day.

24 This seems like a mountainous impossibility at this point, but  
25 I think that the good faith of that effort might be better

1 documented if we can stay until at least 5:30 tonight, and pos-  
2 sibly 6. I know all of you can't, but I would really appreciate  
3 it, as a personal favor, if we could do that, to make every effort  
4 we can.

5 Senator Spong. Mr. Chairman, I can stay until 6, but not  
6 beyond.

7 Senator Muskie. If we could agree on that, then at 4:25  
8 I would leave, make my speech and come back, and the committee  
9 could go on with the constructive discussion.

10 The Chairman. I have a point at this juncture. The faith  
11 of the membership of this subcommittee is not in question.

12 Senator Muskie. No, I was speaking of mine.

13 The Chairman. I say in the desirability of moving as we  
14 can in a realistic and effective way. Now, Senator Cooper and  
15 I -- I only speak for myself in this instance -- but I couple him,  
16 with a situation that was arranged quite some time ago, in refer-  
17 ence to a time between 5 and 5:30 by special order when with  
18 Senator Percy we are to discuss the introduction of a bill which  
19 has to do with the improvement of the environmental programs of  
20 the U. S. Corps of Engineers, and we are the co-sponsors of the  
21 legislation.

22 It is being introduced, and we are discussing it at that  
23 time, from 5 to 5:30 approximately. Now I, of course, am commit-  
24 ted to that obligation, as are you, Ed.

25 Senator Muskie. Yes.



1       The Chairman. Now, Senator Cooper, if you have any comment  
2 to make, why perhaps it would be made at this time.

3       Senator Cooper. Well, I can go. I won't say much.

4       The Chairman. Well, don't go at all. But I understood  
5 that you were included.

6       Senator Cooper. I will be there, to express my views about  
7 it.

8       I can come back, and I can stay here.

9       Senator Muskie. I think that would be very helpful. I will  
10 be back before you leave. And then if you could come back at  
11 5:30, I think we could make some progress on at least some of the  
12 kinds of changes we are discussing.

13       The Chairman. Well, Ed, I didn't want to leave without  
14 having it understood why I am leaving, that's all. So I would be  
15 able to remain here, you know, 35 or 40 minutes.

16       Senator Muskie. If we spend three and a half hours this  
17 afternoon, we have made an effort that can't be criticized.

18       The Chairman. I think so, and also at the prior meeting,  
19 you know, that was a longer meeting.

20       Senator Jordan. Mr. Chairman, I have to leave at 5, but I  
21 can come back at 5:30 and stay to 6, and I will do that.

22       Senator Muskie. That's good. With that understanding, may  
23 I ask Leon to continue then.

24       Mr. Billings. Senator Gurney, were you satisfied with the  
25 response to this question of reading requirements?

1 Senator Gurney. Well, I thought we were going to finish  
2 it up.

3 Mr. Billings. One additional point, on what the staff  
4 refers to as indigenous pollutants, such as sulphur oxides. In  
5 Jacksonville, for example, you have many sources of sulphur  
6 oxide, municipal power plant there, your craft mill, and so on.

7 It may be that by applying the maximum degree of technology  
8 one place, and a lesser degree of technology, which is also the  
9 maximum to another, you can get the desired air quality result,  
10 and in another area, you may want to alter which source has the  
11 greater degree of control imposed on it.

12 For example, if technology is not available to control stack  
13 gasses from power plants, the substitution of low sulphur oil  
14 might be in order, and an only partial control of the craft.  
15 Between the two, you would have achieved an ambient air quality.

16 Senator Gurney. I understand.

17 Mr. Billings. This regional flexibility is what is intended.

18 Mr. Chairman, the full committee has not addressed the point  
19 of the three-year deadline for the approval of the plan. Sur-  
20 prisingly, only two of the comments we received addressed that  
21 question. It is on page 13, line 23.

22 One proposal asked that that time be five to six years.  
23 Another proposal asked that it be "a reasonable time."

24 Senator Jordan. Now let me butt in again here. Now when  
25 you say this on this, this pertaining to automobile emission and

1 everything?

2 Mr. Royce. No, sir.

3 Senator Jordan. This is not talking about automobiles at  
4 all.

5 Mr. Royce. No, sir, just stationary sources here.

6 Senator Muskie. Well, let me say this, Everett, to be  
7 clear. To the extent that the used car is a problem in urban  
8 areas, to that extent, the region and the state involved will  
9 undoubtedly have to find an answer to the pollutants emitted by  
10 used cars.

11 And in my judgment, it is the biggest single pollution prob-  
12 lem in these areas. This could conceivably involve the control  
13 of traffic flow, the times of day when it can be concentrated,  
14 the places where it can be concentrated. It may involve the  
15 imposition by local cities of requirements that would involve the  
16 attaching of catalytic mufflers, some other technological develop-  
17 ment, to ease the problem, but that decision as to how they deal  
18 with the problem is initially the responsibility of the cities,  
19 and over them, the states, that control the regions.

20 But that could involve, and undoubtedly will involve, some  
21 control or regulation of the use of used cars in the severe prob-  
22 lem areas.

23 Senator Jordan. This three years is covered by them also?  
24 This three years right here?

25 Senator Muskie. That's right.

1 Senator Jordan. Is covering these units?

2 Senator Muskie. What it amounts to in all is ---

3 Mr. Billings. Three years plus 17 months for existing  
4 pollutants.

5 Senator Muskie. So that is four years and five months, as a  
6 practical matter.

7 Mr. Royce. From date of enactment, which means, Senator  
8 Jordan, we are talking about 1975, when we look at three years.  
9 We are talking about late '74-'75.

10 Mr. Billings. This does not affect the new cars, the manu-  
11 facture of the automobile.

12 Senator Jordan. Well, I think you are going to have to  
13 give these second thoughts, because they are here by the millions.  
14 There aren't just a few of them.

15 Senator Muskie. That's what makes them such a problem.

16 Senator Jordan. I know, but they are here, and if you  
17 ground a fellow that has to get to work in his car, and he can't  
18 put an awful lot of these things on that, you are going to have  
19 a lot of people in jail.

20 Senator Muskie. Well, all right, let's put it the other  
21 way. Even if the provisions for new cars which we have in this  
22 bill became law, if as a result we get the so-called clean cars  
23 in 1975, that means that in the meantime we will have added another  
24 four production years or something like 36 million cars, more  
25 used cars, that are not subject to adequate controls.

1       It takes ten years for the used car population to turn over.  
2 That would mean that even if we get the clean new car by 1975,  
3 we will not have a clean used car population until 1985. That  
4 is 15 years from now, and the used car population by that time --  
5 what is the projection? It will be close to 150 million, and I  
6 don't know what it will be in 1985, if it is a straight line  
7 projection -- probably 225 million used cars, and already carbon  
8 monoxide levels in cities like Chicago are unfavorable to public  
9 health.

10       Already -- with a little more than a hundred million used  
11 cars.

12       Now you have got to take that into consideration, and if we  
13 want to tell the people in the cities that we know that these  
14 used cars are creating a health problem now, but we can't really  
15 hope to clean it up until 1985, that is a message that has  
16 serious import as well.

17       Senator Jordan. Well, that wasn't my question. In the  
18 first place ---

19       Senator Muskie. Well, it is related to your question,  
20 very directly.

21       Senator Jordan. But you needn't worry about all those cars,  
22 because there is no place on the street for them. There won't  
23 be many more.

24       Senator Muskie. Oh, we have found places. We have built  
25 highways and parking garages, and we are hanging onto them for

1 dear life.

2 Senator Jordan. When does this three years start? It is  
3 less than five years on the used cars now; the used car would  
4 have to comply in less than five years from the date of this  
5 bill's passage.

6 Mr. Royce. Senator Jordan, the used cars would not have to  
7 comply nationwide with any standard. The implementation plan  
8 for a region will have to set forth methods and procedures by  
9 which that region can reach the required ambient air quality  
10 standard.

11 Now it may be in the City of Chicago, in Philadelphia, in  
12 Manhattan, possibly even in Washington, D. C. that there will  
13 have to be some control on the use of used cars, in order for those  
14 regions to meet the ambient air quality standard which would be  
15 proclaimed, say, for 1975.

16 Senator Jordan. You still haven't answered my question.  
17 When are you going to tell the fellow that has got a second-hand  
18 automobile right now he is going to have to make it meet some  
19 standard set up by the HEW?

20 Mr. Royce. Not until there is a certified device, Senator  
21 Jordan, and not until there is a certified device that will control  
22 emissions on a used car. There are none now existing that would  
23 be in the estimation of the staff certified by HEW. Is that cor-  
24 rect? There is no device today?

25 Senator Jordan. I know that.

1        Senator Boggs. There is nothing in this bill that makes him  
2 do it.

3        Senator Jordan. I know, but when they do find that, how  
4 long is he going to have to put this on his automobile?

5        Mr. Royce. If he lives in Hendersonville, he may never  
6 have to. If he lives in Chicago, he may.

7        Senator Boggs. It is up to the state.

8        Senator Jordan. Well, I would think that whenever HEW  
9 says there is an invention that would do this, you would have to  
10 have him a year or two years for everybody to get one. If you  
11 have got a million automobiles, you couldn't get a million put on  
12 in a week after the law came into effect.

13       Mr. Royce. That's right.

14       Senator Jordan. And they manufactured them, and the fellow  
15 would have to get up the money for some of these old rigs to  
16 buy that thing.

17       Mr. Billings. That is why the bill does not mandate that he  
18 install the device as a matter of Federal policy, but that the  
19 device is to be developed as a matter of Federal policy, and that  
20 is the states need that tool to maintain ambient air quality,  
21 then the state can mandate the installation.

22       Senator Jordan. State or a city?

23       Mr. Royce. Yes, sir, local air pollution agency, yes. The  
24 cities can do it now.

25       Senator Jordan. Well, Los Angeles has already done that.

1 Mr. Billings. The State of California has such a law, and it  
2 has never been enforced because of the lack of availability of  
3 devices that meet their standard.

4 Senator Jordan. Of course they are not saying you have got  
5 to do something you can't do. That's very simple. That's all  
6 there is to that, but they don't sometimes have that much judgment  
7 in Washington, you know. The fellow up here says, "Well, that's  
8 it. Go out and pull his car in."

9 I don't want any of my voters pulled in.

10 Senator Boggs. No, but, Mr. Chairman, let me ask a question  
11 right on that point. The bill, as far as used cars is concerned,  
12 as I understand it, we wish we could do more about it, but we  
13 can't do more about it, and this bill really doesn't do anything  
14 about the used car situation, except to, if a device is found  
15 that is practical, and it has to be certified by the Federal  
16 Government, by the Secretary, and then it is up to the states,  
17 in their overall implementation plan, as to whether or not for the  
18 local community, whether or not they want to say to the used car  
19 man, you have to have spent a hundred dollars to put this device  
20 on.

21 That is up to them. We don't try to do it.

22 Senator Jordan. In an area within the state.

23 Senator Boggs. Yes.

24 Senator Jordan. That's all right. I wouldn't have any  
25 quarrel with that.



1 Mr. Royce. That's as far as it goes.

2 Senator Jordan. But I was reading about this three years,  
3 and that is what was troubling me, that this had to be done in  
4 three years. That's when you brought the second-hand automobile  
5 in.

6 The Chairman. What is a second-hand car? Would you tell  
7 me, Mr. Jordan?

8 Senator Jordan. Yes.

9 The Chairman. What is it?

10 Senator Jordan. The day you drive it out of the garage and  
11 pay for it, it becomes a second-hand automobile.

12 The Chairman. Well, I drive my cars an average of five to  
13 seven years. Would that be a second-hand car?

14 Senator Jordan. Well, did you buy it from the original  
15 dealer?

16 The Chairman. Yes, sir.

17 Senator Jordan. Well, that's not second-hand, that's  
18 yours. That is a first-hand.

19 The Chairman. I had no lease arrangement with General  
20 Motors, or Chrysler, or any of the other companies, including  
21 Ford.

22 Senator Jordan. I understand the term of a second-hand  
23 automobile is an automobile that somebody has traded in or sold  
24 that was the second person owned it.

25 The Chairman. I am not facetious about this question. When

1 is a car second-hand? You know, is this, counsellor, when it  
2 moves from one person to another by title?

3 Senator Baker. Second titling.

4 Senator Jordan. That is used car, in my understanding of  
5 it.

6 The Chairman. I think the definition here is a little  
7 fuzzy now.

8 Senator Baker. Cadillac calls it "previously owned."

9 Mr. Royce. Previously owned.

10 Mr. Billings. A used car under this law is a car that has  
11 been transferred to the ultimate purchaser, by definition. New  
12 car is a car to which title has not bee legally transferred from  
13 the manufacturer or dealer to the ultimate purchaser.

14 The Chairman. That's why I am raising this question now.

15 Senator Spong. What question, Mr. Chairman?

16 The Chairman. The question about the second-hand car.

17 Senator Spong. Well, I don't think we use that nomencla-  
18 ture in the bill, do we?

19 Mr. Royce. We do not.

20 Senator Spong. I think all we are doing is distinguishing  
21 between all cars now in being, which are used cars, as opposed  
22 to those that are going to be manufactured, is that right?

23 We don't say "second-hand."

24 Mr. Royce. No, sir, but we do make other distinctions than  
25 those.

1 Mr. Billings. We distinguish as between the car for which  
2 title has not been transferred, and the car for which title has  
3 been transferred.

4 Senator Jordan. As against the cars that are in use now.

5 Mr. Billings. It is that first \$700 you lost the minute  
6 you take it off the lot.

7 Senator Jordan. You sure lose it, too.

8 The Chairman. I know there is a difference between a new  
9 and a used car. We can get to this subject a little later.

10 Senator Baker. I said earlier, Mr. Chairman, and I still  
11 think that we ought to make some gesture toward regulating the  
12 resale of automobiles, even if it is nothing more than a statement  
13 in the statute that you have got to tune a second-hand car before  
14 you resell it.

15 The Chairman. You have to do what?

16 Senator Baker. Tune it. Tune it up.

17 The Chairman. I see.

18 Senator Spong. The complexity of the problem was beauti-  
19 fully demonstrated to three or four of us when we went to Los  
20 Angeles, in what was it, 1967?

21 Senator Baker. Yes.

22 Senator Spong. When we had one automobile in there that  
23 had been off of the showroom about a month and a half, and they  
24 pulled one in there that was -- 1954, 12 years old.

25 Senator Eagleton. That was evidence.

1 Senator Spong. The used car, or the second-hand car, turned  
2 up better than the almost new. You remember that?

3 The Chairman. I remember it well.

4 Mr. Billings. In fact, Senator, the used car met the stated  
5 standard. The new car did not.

6 Senator Spong. That's right.

7 Senator Jordan. Once in a while, you follow one, and you  
8 think he is using hay.

9 The Chairman. Dick, is it agreeable we move, now, to some  
10 matters?

11 Mr. Royce. Yes, sir.

12 The Chairman. No doubt there are further questions.

13 Senator Jordan. I think it is one we will do well to  
14 settle, though.

15 Senator Baker. Before we go on, Mr. Chairman, is there a  
16 section appropriate for me bringing up this used car thing?

17 Mr. Billings. Yes, sir.

18 Mr. Royce. Yes, sir.

19 Mr. Billings. Yes, sir, Section 211.

20 The Chairman. Is that all right, Howard, to wait until  
21 then?

22 Senator Baker. Yes, I can wait.

23 The Chairman. I am ready, if you want to.

24 Mr. Billings. On page 15.

25 Senator Spong. Well, now, may I ask, did we end up with

1 "public health" or "health of persons"?

2 Senator Boggs. "Health of persons."

3 Senator Spong. All right.

4 Senator Baker. Senator Cooper, before he left, pointed out  
5 that we talked about the general health and welfare, and he wants  
6 to talk about that some more when he comes back.

7 The Chairman. Well, we had better hold it, then, if there  
8 is some problem. I don't know.

9 Senator Baker. Well, that's the message he gave me as he  
10 was leaving, so I recommend that we take that up again when he  
11 returns.

12 The Chairman. All right, sir, we will do that.

13 Senator Gurney. Mr. Chairman, before we get to 15, what  
14 about this objection these people had on page 14?

15 The Chairman. 14?

16 Senator Gurney. The chemists.

17 The Chairman. Just before we go to that, Bill, did you  
18 have some comment that related back?

19 Senator Spong. No, and I want you to appreciate the spirit  
20 in which this is said. I don't think it makes a great deal of  
21 difference whether we have "public health" or "health of persons,"  
22 because I think each can cause some problems in interpretation,  
23 and I for one wish we wouldn't dwell so long on something like  
24 that, and try to move along.

25 The Chairman. All right, sir. Thank you.

1 Senator Gurney. They suggested that subparagraph (D) be  
2 deleted and the matter be turned over to the President's Council  
3 on Environmental Quality. Could you just make an estimate on  
4 that? I mean ---

5 Senator Jordan. (D)?

6 Senator Gurney. Is there any point to that?

7 Mr. Billings. Senator Gurney, the staff discussed this at  
8 length this morning, and as we have before, it is felt that the  
9 procedures that are set forth in (D), which are not mandated,  
10 are tools which the Congress expects the state to use in trying  
11 to meet, again, the national ambient air quality standard pro-  
12 tective of public health.

13 You will notice the words "to the extent necessary," "appro-  
14 priate procedures" and so on. These are alternatives. They  
15 are operations available to the state, so that when the statute  
16 proceeds to the point where you have an application, for example,  
17 an application for a court extension of the standard, the court  
18 will be able to look and see whether you have used all of the  
19 tools that are available to you, or whether you haven't, in fact,  
20 made the substantial effort, which is the test of the court's  
21 extension.

22 These are recommendations, rather than mandates. They would  
23 not absolutely have to use any, so long as they reached the goal.

24 Senator Gurney. All right. Thank you.

25 Mr. Billings. On page 15, and at the bottom of page 14 to

1 the top of page 15, paragraph (F), concern was raised as to the  
2 making reports available to the public at reasonable times. This  
3 was discussed in subcommittee. This appears specifically on  
4 lines 6 through 8.

5 Concern was expressed that making these raw data reports  
6 available to the public would only lead to confusion and harass-  
7 ment, potential adverse publicity for the polluter. The staff  
8 recommends, therefore, change in the language which reads as  
9 following, starting after that on line 6, "and further provides  
10 that such reports shall be correlated by the state agencies with  
11 any emission requirements or standards established pursuant to  
12 this Act; such correlated reports shall be a part of the record  
13 and available at reasonable times for public inspection;"

14 It is this attempt to take this information out of the raw  
15 data field and relate it to what is expected of the polluter.  
16 In this case, then, if he is allowed to discharge ten tons a day,  
17 and he is only discharging nine, the evidence will be available  
18 and he won't be so easily distorted.

19 Senator Jordan. Well, that brings me back into the picture  
20 again.

21 The Chairman. All right, Everett.

22 Senator Jordan. This bill, does this mean here that every-  
23 body that has got a factory of any description or anyplace where  
24 there is a smoke stack of any description, or whatever it might  
25 be, he has got to keep records and keep data available and make

1 reports on how well he is meeting some standard that has been  
2 set?

3 Mr. Billings. Yes, sir.

4 Mr. Royce. Yes, sir.

5 Senator Jordan. Well, you are going to get into trouble  
6 with that one, brother.

7 Mr. Royce. Well, sir, he would have to know that in order  
8 to know whether or not he is in violation.

9 Senator Jordan. I think that is up to the county or the  
10 state or the city to tell him, and keep those records themselves,  
11 and come around and test. A lot of these people won't and  
12 couldn't know how. It may take some expertise of a lot of descrip-  
13 tion to check all these standards you are talking about.

14 Senator Boggs. He has got to keep his own records and docu-  
15 ment his situation, or he is in trouble with the state authori-  
16 ties. We are running right into that in Delaware now, with the  
17 water people.

18 Senator Jordan. It is no problem with your water, but air  
19 is a different thing entirely.

20 Senator Boggs. They haven't got to it yet on air, but the  
21 man, to protect himself, the so-called polluter, he had better  
22 keep pretty good records.

23 Senator Jordan. That's not terribly hard to do, if you are  
24 discharging into streams. You can just take a cup of that water  
25 and take it right to your lab, just like the city does on the



1 drinking water, and check that for anything, by the hour, but to  
2 keep data on smoke stacks or emissions of any gaseous things is  
3 something that would require a lot of technical know-how, and I  
4 don't believe the average plant would be equipped to do that and  
5 could do it.

6 Senator Boggs. Let's ask a question on that. The average  
7 plant is not just going to rely on the county inspector or some  
8 state inspector. He has got to know what he is emitting himself,  
9 hasn't he?

10 Mr. Royce. Yes, sir.

11 Mr. Billings. In most instances this is already the case.  
12 There is a theory if you know what goes into the process, you  
13 know what comes out of the stack, in the first place; and in  
14 the second instance, in many cases, the industry or the plants  
15 prefer to monitor their own emissions than have the state agen-  
16 cies or the Secretary constantly coming in and out disrupting  
17 their processes and installing equipment, and taking samples, and  
18 so on.

19 Senator Boggs. But the little businessman, he has got to  
20 start doing it himself, to protect himself.

21 Mr. Billings. I think in most instances, because of the  
22 burden that is placed on a polluter under this Act, that the  
23 polluter would want to know exactly what his stacks are putting  
24 out.

25 Senator Boggs. I do, too. That's my point.

1 Mr. Billings. So that he could have something to demonstrate  
2 to the state agency or the Secretary or the court that he was  
3 not violating the provisions of the law.

4 Senator Jordan. Well, I would think, and now I am talking  
5 about something I know something about, because I have got smoke  
6 stacks of my own that burn oil and gas and coal, and all of them  
7 and lots of it. To determine, now, the first place is, you can,  
8 by a certain analysis and standard, you know about what you will  
9 get from coal, burning coal. You will know that pretty well.  
10 And you know what you are getting from burning gas, and you know  
11 what you get from burning oil.

12 Now there should be some standard, because you know, but to  
13 get up on top of that smoke stack, I don't know how you are going  
14 to find out what, and it varies from day to day, too. You look  
15 out your window and see one smoking that is not supposed to, but  
16 your air conditions and oxygen content and so forth changes, which  
17 being mechanical equipment sometimes just doesn't operate it  
18 along that way.

19 But a little fellow that's got not a little bit of the old  
20 factory, he has just got a little old furnace for heat, and you  
21 are going to say now he has got to do so and so. I don't know  
22 where you are going to wrap this boy up.

23 Senator Boggs. He is in trouble.

24 Senator Jordan. But you have got several million of them,  
25 you know, and I don't want to get several million people in

1 trouble. They are going to make some requirements and he says,  
2 "Well, mister, you come out here and fix it yourself, because I  
3 am going to keep building a fire. My family is getting cold  
4 here."

5 Senator Boggs. But he is polluting.

6 Senator Jordan. Well, we can go a little bit overboard on  
7 polluting, too.

8 The Chairman. Are we ready now?

9 Senator Gurney. Let me ask Leon a question.

10 The Chairman. Yes.

11 Senator Gurney. Do you mean by your language that if a  
12 state standard or a national standard is one ton of arsenic,  
13 we will say, ---

14 The Chairman. What did you say?

15 Senator Gurney. I am just using an example of his language  
16 here in these reports, trying to use what he is saying, you say the  
17 standard is one ton of arsenic. You say, Scott Paper Co.,  
18 Jacksonville, Florida, three-quarters of a ton of arsenic.

19 Now is that what you mean?

20 Mr. Billings. What would happen in the instant case is  
21 these regions, Jacksonville or quality region as a part of its  
22 plan would say, "Scott Paper Company, your limit is 400 grams  
23 of arsenic per hour," and Scott Paper would periodically monitor  
24 its emissions, and file, keep records on its emissions, to indi-  
25 cate that it was complying with that emission requirement.

1 Senator Gurney. Yes. I am talking about the reports. What  
2 about these records?

3 Mr. Billings. The report would then say, "Scott Paper, 400  
4 grams per hour." The records that are made public would show that  
5 Scott Paper was only emitting 350 grams per hour; therefore, it  
6 by definition is in compliance with the standard.

7 Senator Gurney. That's what I mean. O.K.

8 Mr. Billings. So I think a provision like this is quite  
9 protective of the polluter who is in good faith, is keeping  
10 good faith with his obligations.

11 Senator Gurney. Yes, I understand.

12 Senator Boggs. I do, too.

13 Mr. Billings. And it will have the very salutary effect  
14 of keeping the citizen suits down, because this data would be  
15 basically the evidence they would have to use to go to court.

16 Senator Gurney. Right.

17 Mr. Billings. And if the data shows the guy is in compli-  
18 ance, then they are not going to be able to show that he isn't,  
19 with any degree of simplicity.

20 The Chairman. Now, we move ahead, Leon.

21 Senator Jordan. I don't like that section at all, but I  
22 will go along for a while on it. But I will be back.

23 The Chairman. Just a moment. Before you leave, even.

24 Mr. Royce. I would address Senator Jordan's problem, in  
25 his regard for the little small businessman who just will not

1 have the capabilities, the next paragraph, (G), provides that  
2 the state must have these capabilities, in order to come in on  
3 the provisions, the authority to enforce any emission require-  
4 ment, controls imposed on moving sources and other measures in  
5 some implementation, including the requirement for installation  
6 of monitoring equipment and methods.

7       So if some small smelter, who wouldn't know how to use the  
8 equipment if he had it, the state has to have the authority to  
9 do this, so I don't think that we are imposing.

10       Senator Jordan. You are not just talking about smelters  
11 now. I live in a town -- I don't live in the town, but the town  
12 is close to where my depot is, let's put it that way. There is  
13 only one smelter in that whole county, but there are a good many  
14 factories of different descriptions in that county, and there  
15 are chemical plants there, and there are hosiery mills or dye  
16 plants, and big dye plants, and little dye plants, and all sorts  
17 of things, that get involved in this, and it is a real serious  
18 thing about who is going to do this checking, and how much records  
19 he is going to keep.

20       But I want to tell you of one thing, that the manufacturers  
21 are getting a little bit fed up on records and some of the nuts  
22 that come around to look at them, and say, "You are not in com-  
23 pliance," and we just don't want to do something that is not  
24 necessary to do and that is going to be a tremendous burden, and  
25 accomplish nothing.

1 The Chairman. Shall we proceed?

2 Mr. Royce. Paragraph (K) on page 16, Mr. Chairman.

3 Mr. Billings. Mr. Chairman, paragraph (K) on page 16  
4 requires that the state hold public hearings to consider the  
5 adoption of ambient air quality standards more restrictive than  
6 the national ambient air quality standards.

7 Several comments have been made to the effect that this  
8 section should be deleted. The purpose of the section is to  
9 carry out one of the major requests during the hearings, and that  
10 is that the state be mandated to consider standards that were  
11 above the public health minimum or the health of persons minimum.  
12 What it would require is that prior to adopting any plan for  
13 implementation, the state will have held a hearing and let the  
14 people in the region speak to what kind of air quality they want.  
15 The staff recommends against its deletion.

16 Senator Jordan. I would delete it.

17 When you invite the public to start coming in and suing  
18 about pollutants, what I would consider bothering my nostrils  
19 would maybe not affect a lot of other people, but I could still  
20 sue, and you are opening up the courthouse to a lot of troubles.

21 The Chairman. Are you saying that this bill might turn  
22 into a, let's say, bonanza for the legal profession?

23 Senator Jordan. Yes, it could.

24 The Chairman. I see. I didn't say it would. I just asked  
25 a question.

1 Senator Jordan. I didn't say it would either. I said it  
2 could.

3 Senator Baker. Being a member of the legal profession,  
4 I would observe facetiously that we have always been in favor  
5 of these bills which are characterized as "Lawyers' full employ-  
6 mentment practices act."

7 Senator Gurney. Well, let me ask this question. As I  
8 understand it, what this section does is to require a state to  
9 hold public hearings to consider whether they should have stand-  
10 ards more restrictive than the national standards. Is that  
11 right?

12 Mr. Billings. That's right, sir.

13 Senator Gurney. Well, I must say that doesn't make any  
14 sense to me at all.

15 Senator Eagleton. Let me take a crack, maybe, at trying  
16 to explain. This is what I call the Denver, Colorado, clause,  
17 and that is how it came into the discussion in the subcommittee  
18 hearings.

19 Assume national standards of X that protect public health.  
20 My health in St. Louis, your health in Florida, Everett's health  
21 in North Carolina. But Denver, hypothetically, which attracts  
22 lots of tourists, which really merchandises its environment and  
23 its clean air as being one of its inducements to get people there  
24 to ski, says, "That ain't good enough for us. We don't want a  
25 lot of old factories coming in here, even getting it up to where

1 it is even still within the range of safety to the public health  
2 but it won't make it attractive in Denver for skiers to come  
3 out to our region. We want something stiffer than that, to keep  
4 our area as a mecca for tourist travel, skiing, et cetera."

5 Why shouldn't they? I ask rhetorically. Why shouldn't  
6 they, if the Denver region wants something cleaner than public  
7 health, so as to be an inducement for its area, why shouldn't  
8 they have the option of having it?

9 Senator Jordan. They do now.

10 Senator Eagleton. This is what gives them the option.

11 Senator Gurney. I wouldn't object to that, but instead of  
12 hearing ---

13 The Chairman. No ---

14 Senator Eagleton. At the conclusion of this hearing, they  
15 can understand health is good enough, raise your old standard ---

16 Senator Gurney. Tom, instead of requiring it, why not make  
17 it permissive? That's what I don't understand.

18 Senator Jordan. It is already permissible. But you should  
19 not make it a national law that he has got to, because here's  
20 what you get there, in this case. You take your ski boys, they  
21 could get up a lot of people, but maybe you are affecting 90 per-  
22 cent of the population that don't have any interest in the ski-  
23 ing whatsoever, but they might get to everybody.

24 Senator Eagleton. This doesn't foretell what the conclusions  
or findings of the hearings will be. This says the ski boys have



1 a right to be heard; ladies' garden club has a right to be heard;  
2 and the Denver Chemical Company has a right to be heard.

3 Senator Jordan. They can now.

4 Senator Eagleton. This says they all ought to be heard, and  
5 then if the Denver Commissioners of Air Pollution or whatever  
6 they are called decide that they want lower standards for Denver,  
7 that's their business.

8 Senator Gurney. But, Tom, the situation you pose is covered  
9 by Section 112, which says, "Nothing in this title shall be con-  
10 strued as preventing a state, or subdivision . . ."

11 Senator Eagleton. Subsection (C) sets up the mechanism by  
12 which the ski boys use Everett's analogy, and all of us, sta-  
13 tionary manufacturers, environmentalists, the League of Women  
14 Voters, can all be heard.

15 Senator Boggs. Tom, would you yield a second? The question,  
16 it seems to me, is whether paragraph (K) is a mandatory thing,  
17 while in Section 112 the right for a state, for Denver, to do  
18 this is provided, but this paragraph (K) in here makes it manda-  
19 tory.

20 Senator Eagleton. That there be a hearing. It doesn't make  
21 it mandatory as to what the conclusion shall be. We took testimony  
22 in St. Louis ---

23 Senator Boggs. Oh, just to be a hearing.

24 Senator Eagleton. Just to be a hearing.

25 Senator Boggs. In other words, if they don't decide to do

1 it under Section 12, they don't even have to have a hearing.

2 Senator Baker. You do have.

3 Mr. Royce. They don't have to have more strict standards.

4 Senator Eagleton. But you don't have to adopt more strict  
5 standards. You have to hear. In St. Louis we held hearings,  
6 in which I am sorry to say my Air Pollution Commission said, "We  
7 will never hold a public hearing. We don't think the public has  
8 any right to be heard in these matters," they were not going to  
9 hold a public hearing until I embarrassed them into holding one  
10 in Missouri.

11 Senator Boggs. Well, let me ask you, would Denver, Wilming-  
12 ton, Philadelphia, Dover, everybody, have to have a public  
13 hearing?

14 Senator Baker. Yes.

15 Senator Eagleton. All regions.

16 Senator Boggs. 5,000 cities in the state?

17 Senator Eagleton. No, all 44 regions.

18 Mr. Royce. 75 regions.

19 Mr. Billings. It would be on a regional basis.

20 Senator Eagleton. To be held in a city within the confines  
21 of that region.

22 Senator Boggs. But Section 12, that is why I understand it,  
23 said that nothing in this title shall be construed as preventing  
24 a state, political subdivision thereof, intermunicipal or inter-  
25 state agency from adopting within the time for upgrading the

1 standards. Right?

2 So that is provided there, but this says, in addition to that,  
3 whether they decide they want to upgrade or not, they have got to  
4 have a hearing to see whether there is a need to. Is that it?

5 Mr. Billings. If I could speak for Senator Muskie -- which  
6 I do with a great deal of reluctance, because he may contradict  
7 me when he comes back ---

8 Senator Gurney. Before you do that, let me ask one other  
9 question. Why don't you simply put in Section 112, "after pub-  
10 lic hearings."

11 Mr. Billings. Senator Gurney, at one time in one print  
12 this provision was in Section 112. The reason it was moved to  
13 this section is that if there is going to be a public hearing for  
14 the consideration of adoption of more restrictive standards of  
15 air quality than the national standard, it should precede the  
16 adoption of the implementation plan for that pollutant. You have  
17 set up a statutory deadline for achieving that standard.

18 If you could theoretically get into a circumstance where you  
19 have one implementation plan for achieving the national standard,  
20 and then a more restrictive standard which would impose additional  
21 economic costs on polluters, for achieving something higher than  
22 the national standard; if this is all dovetailed together and  
23 there is nothing in the statute that would prohibit the state from  
24 holding the hearing on more restrictive standards at the same  
25 time he holds the hearings on implementation plans, you would then

1 get some greater continuity in relationship between the implemen-  
2 tation plan and whatever ambient air quality standards you are  
3 setting forth. You would create a great burden.

4 Senator Jordan. I think if you are going to let the public  
5 come in and decide on a hearing, I think you ought to hold an  
6 election, and let them vote on it. I can get up a petition to  
7 have you destroyed by morning, and I will guarantee you somebody  
8 will sign it.

9 Mr. Royce. A lot of people will. I tell you that, Senator.  
10 (Laughter.)

11 Senator Jordan. You can get up a petition to do anything  
12 in the world you want to do. I am not saying that facetiously.  
13 They will sign anything.

14 Senator Eagleton. This isn't deciding, this is giving the  
15 public an absolute right to be heard.

16 Senator Jordan. After you heard them, what are you going  
17 to do about it?

18 Senator Eagleton. They came out with the same old stinking,  
19 rotten standards, and said, "The hell with the public." But at  
20 least I forced them to be humiliated in public.

21 Senator Gurney. Let's forget Tom's case, and assume that  
22 this is not a Denver proposition, but down in Florida where we  
23 are happy with the national standards. What does this Act require  
24 us of public hearings?

25 Mr. Billings. Only that the hearing be held, sir. In other

1 words, in Jacksonville, at the time that the national ambient air  
2 quality standard has been promulgated, then there is a requirement  
3 under this Act that there be a public hearing on the plan for  
4 implementation. That is mandate.

5 In addition, in the Jacksonville region, the agency in charge  
6 of air pollution in the State of Florida, which probably would  
7 supervise that region, would hold a hearing to hear whether the  
8 public wanted an ambient air quality standard that was protective  
9 of something greater than public health. In other words, alli-  
10 gators.

11 Senator Gurney. But that's the whole point of the matter.  
12 I mean, 49 states may not be the slightest bit interested in that,  
13 and yet this provision makes them do it. That's the point of  
14 the matter, and I don't think that is practical.

15 Mr. Billings. Going back again, the only thing I can say  
16 is that on the hearing record, the conservation groups, the citi-  
17 zens' groups, the citizens for clean air, and so on, who have  
18 participated in public hearings on the adoption of ambient air  
19 quality standards to date repeatedly said there would be no  
20 public hearing on more restrictive standards, on standards,  
21 unless they were provided, mandated in the statute.

22 And they repeatedly requested the committee to mandate public  
23 hearings for the purpose of more restrictive standards, that the  
24 state would not give them.

25 Senator Jordan. I will be back at 5:35. Aren't you glad

1 I won't be here?

2 Senator Muskie. We are going to pass all the stuff you  
3 don't like while you are gone.

4 Senator Jordan. Just don't drink my coffee.

5 The Chairman. We like you, Cousin Everett.

6 Senator Jordan. We have even got me locked in.

7 Mr. Royce. No, sir, other people are locked out.

8 The Chairman. I would like to, Tom -- I would like to have  
9 your attention and the attention of Ed here, the Florida Ed, We  
10 are talking here ---

11 Senator Muskie. You realize that both of these Ed's come  
12 from Maine?

13 The Chairman. Yes, I know.

14 Senator Gurney. We have got a squeeze play going.

15 The Chairman. You see, I only lift this to the surface, and  
16 it may not have any boyancy. But I wonder if we could say that  
17 the opportunity be afforded for a hearing rather than that there  
18 be a hearing.

19 Now you might say no' quickly. But let's see. The people  
20 that would want to be heard from, I think, are people that would  
21 ask to be heard. Maybe I am wrong about this. But I wish we  
22 might give some thought to it, at least, that the opportunity to  
23 be heard, that that possibly -- and I am not sure of the word-  
24 age -- might be perhaps at least a point for discussion, if not  
25 this minute, then a little later.

1 Senator Gurney. It seems to me, Mr. Chairman, what we have  
2 done here, and maybe that is the thing to do, but now as Leon  
3 explains it even further, what we have really done is this: We  
4 are going to set some national standards, which presumably will  
5 be set wisely and apply to the whole country and do the job.  
6 But as I understand Leon's explanation, the reason why we put in  
7 (K) is that if you have a bunch of militant conservationists  
8 somewhere, you make sure that you give them a chance to blow off  
9 steam.

10 Isn't that what you have really done?

11 Senator Muskie. No.

12 Senator Gurney. That was your explanation.

13 Mr. Billings. That may be the effect, Senator.

14 Senator Gurney. In other words, what you are saying is  
15 that ---

16 Senator Muskie. The vocal people on each side are the ones  
17 that are going to be best heard.

18 Senator Gurney. A national plan, and I hope that will be  
19 all right, but nevertheless, if we have groups -- down within  
20 the State of Florida we have them, as we do in other states --  
21 we will have the public hearing that the state must mandatorily  
22 hold on more restrictive standards, so that all these groups can  
23 be heard.

24 I really don't see much point with that, I must say.

25 Senator Muskie. Well, let me say this: We have, over some

1 five years now, we have gone over this whole question of how  
2 you adapt air quality policy to the needs of regions. Some have  
3 advocated national standards as the way to avoid competitive dis-  
4 advantage, as a way to apply the same standard to everybody  
5 everywhere across the country. Others have said that the way to  
6 do this is to leave discretion to the Secretary, to make it a  
7 wholly administrative procedure. Others, including myself, have  
8 argued that you can't really come to grips with the problem  
9 unless you do it in part at least through the agencies of local  
10 government and state government, exercising their prerogatives  
11 to adapt the policy to their needs.

12 I do not really see how you are going to get any representa-  
13 tive exposure of the needs of these regions without public hear-  
14 ings. I understand, of course, that certain groups are more  
15 militant than others, but let me make a couple of points with  
16 respect to that.

17 The times change. And the militant groups, you know, flit  
18 across the landscape. I can remember when the conference pro-  
19 cedure for enforcement was established, which was established by  
20 industry, at the request of industry, because they felt that  
21 only through public hearings could they be sure that their point  
22 of view would be heard.

23 And this was, now, because another group takes advantage of  
24 those hearings, industry doesn't like them as well.

25 I think you can draw only one point from that: That if you



1 legislate for the purpose of silencing one group or denying one  
2 group a forum, in the long run what you may be doing is denying  
3 a voice or a group or a hearing or a forum to some other group,  
4 whose needs you haven't even anticipated when you set up that  
5 restriction.

6 I think the only safe way to make public policy in this  
7 field, in a time of militancy, is to create the escape valves  
8 which make it possible for people to get things off their chests.  
9 That is a way of doing it. There is nothing in the language that  
10 says only militants shall appear at these public hearings; that  
11 they will try this goes without question, in such a time; but  
12 what do you do with these militants? You can't lock them all up  
13 in jail. This is an area in which they are concerned.

14 They have got as much right to speak as anybody else. And  
15 the public hearing is one way for them to do it as well as others.

16 Now I concede that industry doesn't find it as comfortable  
17 now to participate in public hearings in which other voices are  
18 raised, in a way that they were not raised years ago, when the  
19 conference procedure was first established, but we don't create  
20 hearings for the purpose of creating comfortable forums for people.  
21 We create them presumably in order to surface the issues, and to  
22 subject those issues and positions developed to the cross-fire of  
23 debate and public discussion.

24 I don't think we have got to assume that because a militant  
25 group has access to a hearing that everyone is going to crumble

1 before them. I think that we ought to be able to carry on  
2 responsible government in a free society, and so I am willing to  
3 take any chances on public hearings, and I might note that the  
4 Administration witnesses certainly supported the principle of  
5 public hearings very strongly, in the testimony, as well as I  
6 think several members of the committee, and it is a carryover of  
7 a policy that has been adopted, as I say, many years ago.

8 Senator Gurney. Ed, let me finish, if I may. Nobody is  
9 objecting to public hearings. I am not. What we are talking  
10 about here is this ---

11 Senator Muskie. I thought it was (K).

12 Senator Gurney. But let me read what it says! "... was  
13 developed after such states conducted after adequate notice  
14 public hearings to consider adoption of ambient air quality  
15 standards more restrictive than the national ambient air quality  
16 standards."

17 So what you are doing is saying you are directing it to,  
18 what I say, the militancy. I don't see any point to it. You are  
19 asking for trouble.

20 What is the matter with a public hearing?

21 Senator Muskie. Ed, the only question that is open is in  
22 the area of more restrictive standards. I mean, the national  
23 standard sets the floor. You don't open that up to debate. The  
24 only subject area that is open is more restrictive standards.

25 Senator Gurney. I thought this had to do with an implemen-  
tation

1 plan. That's what the section says it is all about.

2 Senator Muskie. That's right. Implementation of the national  
3 standards, and an obvious second question is whether a region  
4 considers it necessary in its own best interests to adopt more  
5 restrictive standards.

6 Senator Gurney. There is nothing wrong with that either.

7 Senator Muskie. All right, we said that if a region wants  
8 to open up that area, that it should hold public hearings for the  
9 purpose. I mean, the purpose of the language here is not to  
10 invite more restrictive standards, but do I identify the only  
11 area for consideration which is open.

12 Senator Gurney. But it doesn't say that. You have this  
13 section ---

14 Senator Muskie. There is no other area open.

15 Senator Gurney. You have in Section 112 your provision that  
16 if somebody wants to adopt different and more restrictive stand-  
17 ards, they can. So that's all right.

18 And if you tied in public hearings in that one, and simply  
19 provide for a subhearing in (K), this is the only point I make:  
20 That you don't need it more restrictive, and the states that  
21 don't particularly want a different plan than the one used the  
22 national standard.

23 That doesn't prevent anybody from coming in and saying that  
24 "we think it should be different," any more than it does, for  
25 example, when you have a public hearing on the highway.

1 Senator Muskie. If I missed your point, I apologize, but  
2 on your point I still say the only area open for discussion and  
3 policy-setting is in the area of more restrictive standards  
4 than the national standard.

5 And all this is is a reference to that which is a fact.

6 Senator Gurney. Well, as I understood the Section 111, you  
7 establish a national standard, the Secretary does that, and then  
8 each state has a public hearing, to adopt an implementation plan.

9 Senator Muskie. Right.

10 Senator Gurney. The detailed data on how you go about this  
11 also says that you must hold a hearing on a more restrictive  
12 plan. That's the way I understand the language. That's what it  
13 said to me.

14 Mr. Royce. Could I ---

15 Senator Muskie. Let me yield to Senator Spong.

16 Senator Spong. Was any consideration given to double-barrel-  
17 ing, to have the hearing on the feasibility or desirability of  
18 stricter standards under (K), with the hearing that you call for  
19 on the plan itself under 111?

20 Now I think ---

21 Mr. Royce. These could be the same.

22 Senator Spong. Well, you are telling us it could be the  
23 same, and I am wondering if it would go toward meeting any of  
24 these objections. I personally think you ought to be able to  
25 adopt stricter standards in some localities, and I don't want to

1 remove that possibility, but if you can remove one public hearing,  
2 I ---

3 Senator Muskie. What you are asking is whether we could  
4 have a ---

5 Senator Spong. A combined hearing under lll on the imple-  
6 mentation, maintenance and enforcement of standards plan, with the  
7 desirability of having more restrictive standards.

8 Senator Eagleton. That's what (K) does.

9 Senator Spong. I think you would interpret it as being some-  
10 thing separate.

11 Senator Muskie. Let me ask you this: Suppose on line 14,  
12 on page 13, we put a comma, and I will ask the staff to check  
13 me on the technical soundness of this, a comma and the words  
14 "including the consideration of more restrictive standards than  
15 the national ambient air quality standards in each air quality  
16 control region;"

17 Senator Spong. Now I would like to speak to that for Senator  
18 Gurney's benefit. The militants are going to be there.

19 Senator Gurney. Sure they are.

20 Senator Spong. You see, they are going to be at any hear-  
21 ing, and you might as well hear everything they have got to say,  
22 I think, at the one time.

23 Now if what you are saying is that you don't believe states  
24 should have the right to have standards that are more restrictive  
25 than before, then I don't agree with you.

1 Senator Gurney. I didn't say that.

2 Senator Spong. Well, I am glad you didn't, but I think that  
3 if we can arrange to try to do it all in one shot, that we might  
4 make it a little easier, and it is just a suggestion.

5 Senator Muskie. I would have no objection to that whatso-  
6 ever, if that general approach ---

7 Senator Gurney. That's all I mean. But I think that lan-  
8 guage, Ed, as I say, aims in at the more restrictive plan, and  
9 you have got to have a hearing on the more restrictive plan, and  
10 I think it invites trouble. I really do.

11 Senator Muskie. All right, well, does my suggestion meet  
12 your problem?

13 Senator Gurney. What was that, exactly?

14 Senator Muskie. On page 13, line 14, after the word "goals,"  
15 have language to this effect: "including more restrictive stand-  
16 ards than the national ambient air quality standards" or "including  
17 the consideration."

18 But put it in there. I am not sure that that is quite as  
19 precise as it ought to be. But, in other words, provide in that  
20 portion of the section that the public hearings can include  
21 that subject.

22 Senator Spong. You want to tie it in, Ed, to hearings?

23 Senator Muskie. Yes.

24 Mr. Maynard. Line 12.

25 Senator Boggs. Reasonable notice and public hearings.

1 Senator Muskie. The subject of the hearings, of course,  
2 begins on line 12, following the word "hearings."

3 "Draw up and submit to the Secretary, nine months after such  
4 promulgation, a plan on implementation, maintenance and enforce-  
5 ment of such standards and goals" and the word "goals" really  
6 modifies the phrase "more restrictive standards."

7 I thought that would be the place to put it. ". . . includ-  
8 ing such more restrictive standards as may have been adopted."  
9 And I don't like the precise language of it. I think that's the  
10 place to put it, and I might suggest that the staff fool around  
11 with that language in order to make it more acceptable.

12 Mr. Billings. The staff will then assume that at a minimum  
13 the report would indicate that at a minimum the state shall have  
14 considered such standards at this public hearing, but nothing in  
15 the provision as to suggest that the state couldn't hold another  
16 public hearing, or a separate public hearing for that purpose.

17 Senator Gurney. Well, let me ---

18 Senator Muskie. Well, I think that you could provide --  
19 may I ask this? If we have that, there should be a general  
20 provision, that seems to me, that states can hold public hear-  
21 ings to consider any other -- where is that?

22 Mr. Billings. Section 112.

23 Senator Gurney. Ed, could you do this? Could you strike  
24 out that section we are talking about? What is it, (K)?

25 Senator Boggs. (K).

1 Senator Gurney. And then put in Section 112, which talks  
2 about the ---

3 Senator Muskie. Those are state standards.

4 Senator Gurney. But isn't this what we are talking about?  
5 In other words, if we are going to have a more restrict plant,  
6 other than the one that would implement the national standard,  
7 it would have to be a state plan.

8 Now wouldn't you accomplish your mission if you put in Sec-  
9 tion 112 that if a state is considering that, and is going to do  
10 something about it, they have got to hold a hearing at the same  
11 time that they hold a hearing provided in Section 111 on the  
12 national standards?

13 It seems to me that would cover, if a state wanted a more  
14 restrictive plan, wanted to do something about it, they could ,  
15 hold hearings on that at the same time that they are holding hear-  
16 ings on the implementation of the plan, under Section 111.

17 Senator Muskie. Leon makes a point that I think is right.  
18 And wherever it goes, I see no immediate objection to putting  
19 it in Section 112. It should be clear that there must be con-  
20 sideration of more restrictive standards by the state, because  
21 otherwise you are going to get states that content themselves  
22 with minimal standards, when more restrictive standards might be  
23 indicated in the state's best interest.

24 Now the state ought to make that decision, but it ought to  
25 consider -- in other words, it ought not to be able to just close



1 its eyes to that question.

2 Senator Spong. I don't think you accomplish that, if you  
3 don't put it in 111.

4 Senator Muskie. That's what I was afraid of.

5 Senator Eagleton. That's my point. 112 is optional.

6 Senator Spong. Optional, you see, it doesn't even come  
7 in.

8 Senator Eagleton. 111 is the only mandatory section. It is  
9 the only section that deals with a mandatory public hearing,  
10 and if the issue is to be considered at all, and to be required  
11 to be considered at all, it has to go in 111.

12 Senator Muskie. That is my view, although you would rephrase  
13 112 to cover that point, but I see no point in it, because now  
14 you have got a clear-cut distinction between the two.

15 Senator Gurney. Ed, I was simply going to say it would seem  
16 as though it were better to spell it out in the first section,  
17 (A)(1), because the way it is worded now, you get the impres-  
18 sion that maybe you have got to have two hearings.

19 Senator Muskie. Yes. I think that (A)(1) would be a better  
20 place to do it. Why don't you let the staff work on language,  
21 and clear it with your staff people, Ed?

22 Now may I ask the staff this question: If that change is  
23 made, now obviously the implementation plan is going to be sub-  
24 ject to revision. Does the language, as it would be modified,  
25 provide for adequate public hearings in the event of such

1 revisions? It seems to me that revisions ought to be subject to  
2 public hearings, the same way that the original plan is. Hear-  
3 ings on revisions wouldn't have to refer specifically to more  
4 restrictive standards; it would just refer to the implementation  
5 plan generally.

6 So I would suggest that if there is no other provision, this  
7 would be on page 15, beginning of line 21. That's the revision  
8 subsection, and I think we ought to include public hearings there.  
9 If there is no objection, we will do that as well.

10 Senator Boggs. We strike out (K)?

11 Senator Muskie. We are going to strike out (K).

12 Senator Boggs. I think this is an improvement, to put it  
13 all in one.

14 Senator Muskie. I think so, too. There is no reason why  
15 they shouldn't consider it all at once really. Then if they  
16 reject more restrictive standards that first time around, they  
17 can always come back and adopt them.

18 Mr. Billings. Mr. Chairman, ---

19 Senator Muskie. Have you disposed of the three-year time  
20 deadline while I was gone?

21 Senator Boggs. No.

22 Mr. Billings. Yes.

23 Senator Muskie. All right, the next point.

24 Mr. Billings. Mr. Chairman, a number of technical points  
25 were brought to the attention of the staff by the various

1 submissions which I think would be most expeditiously passed over  
2 and gone over with the appropriate staff people, unless there are  
3 questions.

4 Senator Muskie. Well, we will just rely on there being  
5 technical points. If any staff people or especially those repre-  
6 senting Senator disagree with the finding that they are techni-  
7 cal only, please let your superiors know. Or was the word  
8 "superior" misplaced?

9 Senator Baker. They are not even in favor of "peers."

10 (Laughter.)

11 Mr. Billings. The next question would be whether any of the  
12 members have seen the language proposed for the court review on  
13 page 20, and whether there is any objection to it. I think sub-  
14 stantially it meets the points that Senator Baker raised, unless  
15 I am misinformed.

16 Hasn't the draft language been circulated?

17 Senator Eagleton. No, it is still a mystery.

18 Mr. Billings. Still a mystery?

19 Senator Muskie. This is a revision of it.

20 Mr. Billings. The only real change is the deletion of  
21 this.

22 Senator Muskie. We are on top of page 20.

23 Let me read it out loud, if you all have it, and then we  
24 will proceed from it at the same pace.

25 Line 3: "Provision before the three-judge court as authorized

1 by this subsection takes precedence on the docket over all other  
2 cases, and shall be assigned for hearing and trial at the  
3 earliest practicable date and expedited in every way."

4 (3) (A) would be modified to read: "In any such proceeding  
5 the Secretary shall intervene for the purpose of presenting  
6 evidence and argument on the question of whether relief should  
7 be granted.

8 "(B) The court in its discretion and in the interest of  
9 justice may permit any interested person residing in any affected  
10 state to intervene, for the presentation of evidence and argu-  
11 ment on the question of relief.

12 "(4) The court, in view of the paramount interest of the  
13 United States in achieving ambient air quality necessary to pro-  
14 tect the health of persons, shall grant relief only if it deter-  
15 mines such relief is essential to the public interest and the  
16 general welfare of the persons in such region, and finding --

17 "(A) that substantial efforts have been made to pro-  
18 tect the health of persons in such region; and

19 "(B) that means to control emissions causing or con-  
20 tributing to such failure are not available or have not been  
21 available for a sufficient period to achieve compliance prior  
22 to the expiration of the period to obtain an applicable  
23 standard; or

24 "(C) that"

25 And I gather that is the same as -- then on page 21 ---

1 Mr. Billings. After the word "court" on line 7, insert an  
2 "and," so it reads: "; and (B)," and then on line 10, put a period  
3 after the word "region," striking the remainder of (C).

4 Senator Baker. What about (B)?

5 Senator Eagleton. (b) stays in.

6 Mr. Billings. (B) stays in, and (B) may require steps to  
7 be undertaken to reduce any potential adverse effect on the health  
8 of persons during any period of extension in such region.

9 And then a new paragraph 6 to take care of the part deleted  
10 in (C).

11 Senator Muskie. Yes, the following language would substi-  
12 tute for (C). It would be numbered (6), and added to the list of  
13 five that we have been going through: "The Secretary, in consul-  
14 tation with an affected state or states, shall take such action as  
15 may be necessary to modify any implementation plan in order to  
16 comply with the order of the court."

17 We discussed these questions last time, under the prodding  
18 of Senator Baker, and I think the changes reflect his sugges-  
19 tions. I think they are good.

20 Senator Baker. I think it is well done and well drawn, Mr.  
21 Chairman, except I think paragraph (b) ought to be stricken.

22 Senator Boggs. You mean ---

23 Senator Baker. On page beginning at line 7, (B), the reason  
24 for it is based on the same philosophical colloquy that we had  
25 before, and that is whether or not the court's authority and

1 jurisdiction is limited solely to the question of extending the  
2 expiration date of the plan, or to the modification of the plan  
3 generally.

4 And I think (B) gives the court at least arguable authority  
5 to modify the plan, or even to impose a plan of its own choice,  
6 which I will object to.

7 Senator Eagleton. May I raise a point on that? Because we  
8 grappled back and forth on this, trying to get ahold of the  
9 concept. If you take out (B), of course (A) goes out as a  
10 letter, but all it would leave the court to put in its order is  
11 "Yes, you are forced to go ahead with the plan" or "No, you are  
12 not." Is that right, Howard?

13 Senator Baker. Right.

14 Senator Eagleton. Then how would 6 work? Suppose the order  
15 was, I am the judge, Federal judge, and I find in favor of extend-  
16 ing it on the basis of (A) and (B), they made a good gung-ho  
17 effort, and there just isn't the mechanical stuff available to  
18 do the job, so I hereby give you, St. Louis, a year's extension.

19 That's all he can put in his order, under it, right?

20 Senator Baker. That's right.

21 Senator Eagleton. Then how would the Secretary of HEW in  
22 light of that very limited order -- it would be a two-line order  
23 almost, the ultimate order -- how would he do something under (6)  
24 then?

25 Senator Baker. I don't think he could actually do anything

1 more under (6) than, in effect, expect the Secretary to provide  
2 a new plan for the additional one year in light of the court's  
3 finding that it was not possible to comply.

4 But just to finish, but I do not think under (6) -- and if  
5 I am in error, I would hope that we will change (6) -- that the  
6 court itself would prescribe the new plan or elements of it.

7 Senator Eagleton. All right, I am O.K. with you in the court  
8 not drafting the new plan under (5), but is (6) broad enough  
9 when Richardson gets the court order, and it says a one-year  
10 extension has been granted to St. Louis, because they tried hard  
11 and they didn't have the technology? Does Richardson under (6)  
12 then say, "All right, but I, Richardson, not the court, am going  
13 to make some stopgap interim recommendations during this year's  
14 grace period. I am going to order as much as I think you can  
15 reasonably accomplish."

16 Does Richardson have middle ground implementing authority  
17 under (6) in that year period? That's what I am getting at.

18 Senator Baker. Tom, you have got a good point. In your  
19 good lawyer-like way, I think you have put your finger on the  
20 facts there of the last two lines of proposed (6) don't really  
21 cover the situation that we have created.

22 Senator Eagleton. Yes, because it says "must comply with  
23 the order of the court" and the order of the court, if you  
24 strike (B), will just be one-year go-ahead.

25 Senator Spong. Yes or no.

1 Senator Baker. That's right. I think we ought to rewrite  
2 (6), to provide something like that.

3 Senator Eagleton. (6) has to be rewritten if (B) goes out.

4 Senator Baker. I propose that (B) go out and we rewrite  
5 something like this: "The Secretary, in consultation with any  
6 affected state or states, shall take such action as may be  
7 necessary to modify an existing plan, or formulate a new plan for  
8 the period during which said extension shall continue."

9 Senator Eagleton. And you take out "comply with the order  
10 of the court"?

11 Senator Baker. Yes.

12 Mr. Billings. Could you read the last part of that again?

13 Senator Baker. I wonder if she could read it back.

14 (The reporter read a portion of the proceeding.)

15 Mr. Billings. "For the period during which said extension  
16 shall continue."

17 Senator Baker. I don't think we need to spend a lot of  
18 time on this. I think Tom and I are after the same object, and  
19 I think Senator Spong was involved in this colloquy a couple of  
20 times before. I would like to hear what you think, Bill, but it  
21 seems to me that with this language, we have clearly spelled out  
22 a very limited authority for the court, and that we have now by  
23 the improvement of paragraph (6) made it clear that we expect  
24 the Secretary to do everything he can during that one-year exten-  
25 sion, or any subsequent one-year extension, to minimize the



1 effects of the unfortunate necessity for the extension.

2 Senator Eagleton. Precisely. And if your language does it,  
3 that's what I am after, too. We are in agreement on it.

4 Senator Baker. Good.

5 Senator Spong. What we are trying to avoid is the court  
6 getting in the business of writing plane, and becoming expert.

7 Senator Baker. Right. I would recommend that we ask staff  
8 to spell that out with considerable forcefulness and clarity,  
9 that we are trying to convey a limited authority of the court,  
10 and that we specifically do not intend this language to imply  
11 anything beyond that limited authority, because we do not want  
12 the court involved in trying to formulate, modify, or any other  
13 verbiage that the staff chooses, the plan in a substantive way.

14 Senator Eagleton. And you ought to add to that language  
15 that you are trying to give the Secretary broad discretionary  
16 authority to adopt a middle ground thing during this one-year  
17 period.

18 Senator Baker. And at the same time, we are enjoining on  
19 the Secretary the urgent necessity for doing the very best he  
20 can during that year.

21 Senator Eagleton. That's right, I agree.

22 Senator Muskie. May I ask another question?

23 Senator Spong. I am glad it is not schools, because it is  
24 a bad choice between one or the other. I don't know what it will  
25 be as far as this is concerned, but I am not sure whether HEW is

1 going to be any better than that judge.

2 Senator Baker. Well, maybe not, but at least we are avoid-  
3 ing ---

4 Senator Muskie. At least it will hew to the line.

5 (Laughter.)

6 Senator Eagleton. Strike that. We deserve better than that.

7 Senator Muskie. May I ask a question?

8 Senator Baker. I think we ought to substitute that for the  
9 whole section.

10 Senator Muskie. May I ask a question? It has been so long  
11 since I have practiced law that I think I can refer to you law-  
12 yers, so that I may understand what you lawyers have agreed to.  
13 What you have agreed to is that the court, if the court in grant-  
14 ing relief or in considering the question of granting relief,  
15 feels that it wants to attach some conditions, it should have  
16 the authority to do so, with the narrow limits which do not  
17 include a rewriting of the implementation plan.

18 Senator Baker. No. No, sir.

19 Senator Muskie. Then I misunderstand what you have been  
20 talking about.

21 Senator Baker. Let me try to say it again.

22 We want the court to be able to enter a one-sentence order,  
23 saying that they grant a one-year extension, or do not grant a  
24 one-year extension, and if they do grant a one-year extension,  
25 that only the Secretary, not the court, can provide the new plans

1 or modifications of the old plan for that one year; but that  
2 the court in no event can get involved in the substantive content  
3 of a plan.

4 Senator Eagleton. Not in his order, but in his opinion,  
5 the court can pontificate all it wants, and dicta-wise, as to  
6 what they think a plan ought to have.

7 Senator Baker. If they feel compelled to.

8 Senator Eagleton. And they will be compelled in their  
9 opinion to put in a lot of recommendations.

10 Senator Muskie. Well, let me ask a question. Suppose that  
11 in the course of the hearing, the court is persuaded, 98 percent,  
12 to grant the extension. But the facts are presented which create  
13 doubts in the court's mind as to whether such an order will  
14 probably protect the public interest, unless certain specific  
15 things as to which the court has formed definite ideas in the  
16 course of hearings are done. If that becomes the critical point,  
17 and its choice is granting the order or not, you know, his deci-  
18 sion could swing on that. Do you want to make room for that kind  
19 of a situation?

20 Senator Baker. No. For my part, I want the court to have  
21 to take that into account in deciding it will or will not grant  
22 the extension.

23 Senator Eagleton. By the way, does that same three-judge  
24 court retain jurisdiction over the court for the second year  
25 extension? If that's the case, then he has got them.

1 Senator Baker. No, as the statute reads, you just impanel  
2 another three-judge court.

3 Senator Eagleton. If the same court retains continuing  
4 jurisdiction for the next year's extension, then the court could  
5 say, you know, he can call the parties into chambers, or he can  
6 announce in his opinion, "I am going along this year, a one-  
7 year extension, but there are two stinking things in this area  
8 that I hope are cured by next year, or there is no extension."  
9 You know.

10 Senator Baker. It is like the fellow you said, "If you  
11 fellows don't quit bothering me, I am going to pay you, and then  
12 how would you like that?"

13 Senator Muskie. Let me ask another question. The Secre-  
14 tary, presumably, will be a party to these provisions.

15 Senator Baker. He has to be.

16 Senator Muskie. So pose the situation I just posed. The  
17 judge says, "Well, I can't put any conditions in this order, but  
18 by God I am going to call the Secretary in, and see what his  
19 intentions are with respect to the implementation."

20 He calls them into chambers and says, "Now these two points  
21 trouble me. If I grant this extension, what provision are you  
22 going to make to cover these two points?" Is that forbidden  
23 within the concepts that you gentlemen had in mind?

24 Senator Baker. No.

25 Senator Spong. The judge doing that? No, I think what

1 Howard has been concerned with is an equity power, or an in per-  
2 sona power where the judge would be in a position of ordering  
3 certain things to be done, and the court will have the interim  
4 responsibility of following up, seeing that they are done. But  
5 I think your objection is more to the court determining what ought  
6 to be done, and ---

7 Senator Muskie. The question I am raising is as to the means  
8 the court may have for influencing what is done. It doesn't seem  
9 to me that it would be inappropriate, if they find the right  
10 way to permit the court to influence them.

11 Senator Baker. I think, Mr. Chairman, it would not be  
12 inappropriate. As a matter of fact, I think it is very likely  
13 that exactly that would occur. As most of us who have tried  
14 cases before the Federal Judiciary know, at some point or other  
15 I gather there is a responsibility on the part -- or they deem  
16 there is a responsibility on the part of the Federal Judiciary  
17 to try to reconcile the matter before you go to trial.

18 I judge there would be an informal conference, and I think  
19 it is appropriate. The only thing is I do not think that the  
20 judge should be able to include additional conditions in his order.

21 Senator Muskie. Let me make one observation: It seems to  
22 me that the language which you have already suggested for (6) is  
23 going to be ambiguous enough on this point so that a judge may  
24 invite himself into the case in the way I suggested.

25 Senator Baker. Yes, he can. Under the language that I

1 dictated, I think he could also.

2 Senator Muskie. All right.

3 Mr. Billings. May I ask a question?

4 Do the members anticipate that a governor who is seeking  
5 relief from the effect of the expiration most likely would go under  
6 (B) on page 19, line 18, to seek relief for person or persons in  
7 such air quality control region, or is it anticipated that the  
8 general effect of this provision will be to go for relief from  
9 the effect of the expiration on the entire region?

10 Now, the reason I ask the question is that if the effect is  
11 relief on the entire region, then the test that is set forth in  
12 the means to control emissions causing or contributing to such  
13 failure are not available or have not been available, but may  
14 just apply to one or two sources in the region would be an excuse  
15 for the entire region not complying.

16 Now I don't know. That is not ---

17 Senator Baker. I don't understand. Would you say it again?

18 Mr. Billings. If the governor comes in and petitions for  
19 relief for the entire region.

20 Senator Baker. Under paragraph (A)?

21 Mr. Billings. Under paragraph (A), and yet the reason for  
22 the petition for relief for the region is paragraph (B), that a  
23 means to control emissions has not been available for a suffi-  
24 cient period of time only apply to a few sources within the region,  
25 then the effect would be that the whole region would be relieved

1 from the deadline, while the relief was only necessitated by a  
2 very few sources of pollution within the region.

3 Senator Baker. What is the practical effect of it?

4 Mr. Billings. The practical effect that I am concerned with  
5 is that every source of pollution would have an additional year  
6 to fiddle around with trying to obtain control. Just because,  
7 for example, there was no oxides of sulphur technology.

8 Senator Baker. Well, haven't we covered that by providing tha  
9 the only basis on which he could do it is a finding that condi-  
10 tions (A), (B) and (C) on page 20 have been met, and regardless then  
11 of whether it affected person or persons or the whole region, that  
12 the court must first find that these three things are fulfilled?

13 Senator Muskie. May I suggest in the report that in defin-  
14 ing (A), on line 18, page 20, we indicate that, of course, all  
15 those sources in the region, that one of the tests to meet (A) is  
16 that all those sources within the region that have the ability  
17 of control in accordance with the plan must have achieved that  
18 control, and that you can't -- they can't lean on the crutch of  
19 the industry that doesn't have technology or means.

20 Mr. Billings. Would the committee then indicate ---

21 Senator Muskie. So, in other words, substantial efforts  
22 made to protect the health of persons in such region should apply  
23 this as a minimum.

24 Mr. Billings. Would the committee then indicate its intent  
25 that relief sought under paragraph (A) would be read with (D)?

1 More likely relief ---

2 Senator Baker. No, I don't think it makes a particle of  
3 difference. I think the practical effect will be this: If the  
4 court finds that there should be an extension because a relatively  
5 small segment of industry, within a given region, can't comply  
6 because of the absence of technology, that the court will grant  
7 the relief, if in its traditional and classical process of  
8 balancing equities decides that ought to, and that the statutory  
9 requirements have been met. I think then the responsibility  
10 shifts off the court and onto the Secretary, to provide modifi-  
11 cation of that particular situation for that intervening year,  
12 rather than applicable to the whole area.

13 For instance, 98 percent of the industry does have the tech-  
14 nology and 2 percent doesn't. That 98 percent would be required  
15 to comply even in that year of extension by the Secretary, and  
16 only the 2 percent would be left off the hook, so to speak, during  
17 that year with that judicial granting.

18 Senator Muskie. I think in the report we ought to make that  
19 intent clear to the Secretary.

20 Senator Baker. Well, I think that would be fine.

21 Mr. Billings. This would not, then, stay application of  
22 enforcement under 11 against that 98 percent, even though 2 per-  
23 cent was let off the hook?

24 Senator Baker. No, it would not, that's right, and I think  
25 that can better be spelled out in statutory language or in the



1 report. I think the report would be the better place for it.

2 Senator Eagleton. Put a "nothing herein shall" clause.

3 Senator Baker. That is good, if you want to.

4 Mr. Billings. Do we have that instruction?

5 Senator Eagleton. You could just tack that on somewhere,  
6 the end of (5).

7 Senator Baker. Put it at the end of (6).

8 Senator Eagleton. Or in (7). I don't care.

9 Senator Muskie. I think (6) would be more logical, since  
10 that refers to limitation.

11 Senator Baker. Now if we are in general agreement on that,  
12 I want to make one point, just to make sure that we are all fac-  
13 ing the fact -- because I am at peace with it, but I want to make  
14 sure we look at it -- we are going to be subjected to some  
15 criticism possibly for vesting the authority to file this suit  
16 in the governor, rather than in a citizen suit.

17 I happen to think there has to be some buffer. I happen to  
18 think that the governor is an elected, responsible official, and  
19 that that is the right place to do it, but let's just face the fact  
20 that a lot of people are going to claim there ought to be class  
21 actions or individual suits, or whatever, instead of just a suit  
22 initiated by the governor.

23 I think that staff, if we are still in agreement on this,  
24 ought to give some attention to clearly spelling out the necessity  
25 for doing it this way, or the desirability of doing it this way.

1 Senator Muskie. Howard, may I say in response to that that  
2 a citizen wouldn't be likely to take advantage of any opportunity  
3 to bring a suit to extend the time.

4 Mr. Billings. Well, if the citizen were a polluter?

5 Senator Muskie. That isn't what he is talking about. And  
6 we have made provision in here for other interested parties ---

7 Senator Baker. To be heard.

8 Senator Muskie. --- to have a hearing.

9 Senator Baker. And offer evidence.

10 Senator Muskie. But you wouldn't want a class action to  
11 start this.

12 Senator Baker. The sequence of events, Mr. Chairman, is  
13 this: Not less than a year before the expiration of a deadline,  
14 the governor must decide to file a suit or not to file a suit.  
15 If he decides to file a suit, we have carefully and excruciatingly  
16 spelled out the basis on which that suit shall be determined, but  
17 if he decides not to file a suit, the statute is silent on what  
18 anybody can do about it.

19 Senator Muskie. Well, the only parties who would be inter-  
20 esting would be the people whose activities are under control.

21 Senator Baker. No, I can visualize a good number of civic  
22 organizations, or as somebody expressed a minute ago, militant  
23 whatever, that would criticize the governor for not filing a suit.

24 Senator Muskie. Yes, but you are always interested in a  
25 continuation of activities which would be prohibited under the

1 implementation plan; in other words, that side of the citizen --

2 Senator Baker. If he declines to file suit, the thing  
3 expires, and everybody ought to be happy except the polluter.

4 Senator Muskie. O.K., I think that is a proper observation  
5 to make.

6 Senator Jordan. Sorry.

7 The Chairman. That's all right.

8 Senator Cooper?

9 Senator Cooper. In all our problems about all the techni-  
10 cal details, I always look upon these reviews as a chance for  
11 anyone to be heard. The governor will be under pressure by the  
12 industries affected. He will be under pressure in another way  
13 from the environmentalists.

14 We don't know which one will be the most powerful. In the  
15 meantime, and I say this because I believe everybody has got a  
16 right to be heard, and I am not here to argue against clear air,  
17 but I believe in people having the right to be heard. And if he  
18 doesn't act, and there is a substantial branch of industry that  
19 has said, "We can't meet this," of course, this is just the  
20 first fixing of the time, but have they got any rights at all?

21 They have got some small rights under the appeals.

22 Senator Baker. Only if the governor decides to file the  
23 suit. They have a right only if the governor decides to file  
24 the suit. If he does not, the plan expires.

25 Senator Cooper. What?

1 Senator Baker. The deadline expires if the governor elects  
2 not to file the suit. I think as a practical matter, most  
3 governors would file the suit, because that is the fail-safe  
4 feature, and leave the Judiciary to decide that there should or  
5 should not be an extension.

6 Senator Cooper. At that point, has there been such a  
7 claimed incursion, to use the great word now, on the right that  
8 they would have, they would get jurisdiction in a court, under  
9 the due process clause?

10 Senator Muskie. They could raise a constitutional question,  
11 but that's the only question they could raise, and you know, you  
12 and Howard and I discussed this the other day, and the tentative  
13 opinion I have gotten on that is that the likelihood is that the  
14 court will sustain the constitutionality of this provision.

15 Well, what is involved is the question of whether Congress  
16 has performed an arbitrary act, and the precedents are probably  
17 pretty strongly in the direction of upholding the constitutionality  
18 of this deadline.

19 Now that is a tentative agreement, and we try to firm it up,  
20 and get a stronger one.

21 Senator Baker. Is there some ---

22 Senator Muskie. The judicial review that would be involved  
23 there could not go to the question of, you know, whether or not  
24 there ought to be another deadline, none of that involved. It  
25 would just be up and down on the question of constitutionality,

1 as I understand it.

2 Senator Baker. I think there is a fair chance that if we  
3 made no provision for judicial review, as the bill originally did  
4 not, the point Senator Cooper made would make it highly vulner-  
5 able to a constitutional attack on the deprivation of property  
6 without due process. But since there is a judicial review pro-  
7 vision, even though there is an administrative condition precedent,  
8 i.e., the decision by the governor to file the suit, I am inclined  
9 to think that it would meet the requirement of the due process  
10 clause.

11 Senator Cooper. In other words, even if he didn't file it.

12 Senator Baker. Yes.

13 Mr. Jorling. There is another point that might usefully  
14 be brought up at this point.

15 Senator Muskie. May I say, John, in addition, that on the  
16 administrative decisions that are involved in implementing it,  
17 those are subject to judicial review.

18 Mr. Jorling. One of the commentaries that have been made  
19 available to the committee correctly points out that in Section  
20 117, the enforcement section, that a person has no opportunity to  
21 comply with the order, and yet still seek to challenge its  
22 validity, short of wilfully violating it and risking criminal  
23 sanctions, and they have suggested that it would be appropriate  
24 to add a provision that if the alleged violator complies with  
25 the order issued by the Secretary, and yet seeks to challenge its

1 validity, he would be awarded the opportunity to do so, or at  
2 least that opportunity be made clear.

3 We have been trying to come up with language, and have sug-  
4 gested something or would suggest something like this: "Any per-  
5 son issued an order" -- which is a cease and desist order basically  
6 -- "pursuant to subsection (A) (2) of this section and who under-  
7 takes compliance with such order shall not be foreclosed from  
8 instituting in the Federal District Court in which the alleged  
9 violation occurs an action against the Secretary to challenge the  
10 validity of such order."

11 Senator Muskie. Where would that go now?

12 Mr. Jorling. That would go on page 40.

13 The Chairman. What page?

14 Mr. Jorling. Page 50, between lines 5 and 6.

15 The Chairman. Page 40.

16 Mr. Jorling. And I think it does go to part of the issue  
17 Senator Cooper raised about due process and ability to challenge  
18 administrative action.

19 Senator Muskie. Would you read that again?

20 Page 40, between lines 5 and 6.

21 Senator Jordan. While you are shuffling these papers, is  
22 there any provision in here for the administrator makes a ruling  
23 as to an individual plant, person, or whoever it might be, is  
24 there any provision set up for a hearing, that you can have a  
25 hearing without having to get the governor to have a hearing?

1 Through your Social Security laws and all of them, there are pro-  
2 visions for hearings in most of these things, and is there any  
3 provision in here where anybody could have a hearing that there  
4 has been a ruling cited against them?

5 Senator Muskie. Well, are you referring to the section we  
6 have just been discussing?

7 Senator Jordan. Any section.

8 Senator Muskie. Well, the answer is different in different  
9 sections. With respect to the one that we are just discussing,  
10 and that is, the extension of the deadline, only the governor is  
11 given the right to bring action.

12 I don't know.

13 Mr. Royce. That is to extend the deadline.

14 Senator Muskie. That is to extend the deadline, that's  
15 right.

16 Mr. Royce. In the next section, Senator Jordan, new  
17 source standards of performance, they come under the Administra-  
18 tive Procedures Act publication, so that everybody is allowed  
19 an opportunity to comment within a specified time. And in the  
20 state implementation plan section, there are public hearings.  
21 It varies with the section, but in every section, I think these  
22 safeguards have been built in.

23 Senator Jordan. Well, what I was talking about, in case  
24 they say, "You haven't met the standard that we have subscribed,  
25 and the man says, "I think I have," or "I can't" or "I am

1 justified," and so forth, would he have an opportunity to have a  
2 hearing or would he have to go through the Federal courts? And,  
3 of course, that's where they break him. That is like the school  
4 business now. They just cut your money off, and that settles  
5 that, you know.

6 Senator Muskie. May I suggest for the record, and ask  
7 the staff, I am right or wrong, emission requirements, which I  
8 gathered is what Senator Jordan is interested in, emission  
9 requirements for particular plants.

10 Senator Jordan. Yes.

11 Senator Muskie. They are covered by implementation plans,  
12 and those are subject to judicial review under the provisions of  
13 the bill. That is, if an implementation plan proposed a schedule  
14 or timetable schedule for control, and anyone subject to that  
15 plan challenges it, there is provision for judicial review.

16 Am I right or wrong? I ask the staff.

17 Mr. Meyer. It would be subject to review.

18 Senator Muskie. The staff tells me it would be subject to  
19 review.

20 Senator Jordan. But would there be an appeals board or a  
21 hearing board, or something, set up in there? I am talking about  
22 an individual now, a man's plant. We come in and say, "You are  
23 not in compliance here."

24 Mr. Meyer I think that would vary under the implementation.  
25 The actual procedure would vary from state to state, because that



1 would be under state law, the implementation plan there would be  
2 carried forward by state law, and in some states they would have  
3 the hearing board setup, and in other states they might just have  
4 a state court.

5 Senator Jordan. But we are passing a Federal minimum standard  
6 bill here.

7 Senator Muskie. May I suggest, in order to focus Senator  
8 Jordan's attention on the applicable provision of the bill, it  
9 is on page 35, line 16, to line 22, Everett, (B): "of any approved  
10 or promulgated implementation plan including any emission require-  
11 ment therein, within thirty days from the date of such promulga-  
12 tion or approval, or after such date whenever it is alleged" and  
13 so on.

14 In other words, he has a right to appeal within 30 days of  
15 the promulgation date, or in any case, after 30 days he can  
16 appeal, in addition, if there is new information, which changes  
17 his ability, for example, to meet the emission requirements.

18 The Chairman. Bill, do you have any comment on this item?

19 Senator Spong. No.

20 Senator Muskie. We were going to consider the new language,  
21 Mr. Chairman, which has just been distributed by the staff.

22 The Chairman. Yes, I have that.

23 Senator Muskie. I have not seen it before.

24 The Chairman. This is on page 40?

25 Senator Muskie. Yes, between lines 5 and 6. What would this

1 be numbered, Tom? Or would it be numbered?

2 Mr. Jorling. It would be new paragraph (5), and we would  
3 have to renumber that paragraph beginning on line 6.

4 The Chairman. Tom, have you discussed this phrase that you  
5 have written? I am sure several of you have put your thinking in  
6 on this.

7 Mr. Jorling. Yes, Barry and I have gone over this, and I  
8 think we are in agreement, although not with specific language,  
9 with the approach here. I think the original idea came from --  
10 who pointed it out?

11 Mr. Meyer. It was one of the industry people, but this is  
12 similar to the procedures used in tax law, where you can pay your  
13 tax and go to court and get your money back. You cannot pay it  
14 and then run the risk of them going after you.

15 Mr. Jorling. The only time -- without this at least it has  
16 been implied, the only time a person would challenge the validity  
17 of the Secretary's order is by refusing to comply with such order,  
18 and the Secretary prosecuting in the court for such violation.

19 Rather than risk the possible criminal sanctions that that  
20 would entail, they would like the opportunity to comply with the  
21 order, and then challenge it for its validity.

22 The Chairman. Well, I think the language is good myself,  
23 and I look at it, but you gentlemen, I am sure, want to discuss  
24 it.

25 Senator Jordan. You mean the new language, the addition?

1 The Chairman. Yes, sir, the language that has been placed  
2 before us, which would come on page 40 there.

3 Senator Muskie. May I ask a technical question, Mr. Chair-  
4 man?

5 The Chairman. Yes, Ed.

6 Senator Muskie. "Any person issued an order." That sounds  
7 like awkward language. You mean any person subject to an order  
8 issued pursuant to such section?

9 Senator Baker. Or affected by.

10 The Chairman. I don't know what the legal language would  
11 be.

12 Mr. Jorling. On page 37, line 19, is the language that  
13 directs the Secretary, and that language is he "can promptly  
14 issue an order in writing to such person."

15 The attempt was to stay consistent with that, but I am not  
16 sure ---

17 Senator Muskie. I still think it would be better to say  
18 "any person subject to an order issued pursuant to subsection (2)

19 Well, this language on page 37 says, "requiring such per-  
20 son to abate such violation."

21 Mr. Jorling. "Subject to an order issued pursuant."

22 Senator Muskie. A corporation is a person.

23 The Chairman. Barry, why did you use this language? I mean,  
24 I am just asking.

25 Mr. Meyer. Can I decline to answer that on the ground of

1 self-incrimination?

2 The Chairman. I see. It goes to the other point, doesn't  
3 it?

4 Mr. Jorling. Yes. If there was no provision, the operative  
5 language that would be, the language that these people would be  
6 saddled with begins on lines 15 through 18. If they knowingly  
7 violate or fail to, refuse to comply with an order issued under  
8 this section, they shall upon conviction be punished by a fine  
9 of not more than \$25,000 per day."

10 Now they would like to be able to challenge the order, with-  
11 out knowingly violating it ---

12 The Chairman. Are we saying here any person subject to an  
13 order? Is that what we are saying?

14 Mr. Royce. Issued pursuant to.

15 Mr. Jorling. "Any person subject to an order issued pur-  
16 suant to."

17 Senator Jordan. I think the \$25,000 a day is ---

18 Senator Muskie. The language on page 37 says, "He shall  
19 promptly issue an order in writing to such person, requiring  
20 such person to abate such violation." Now that person is subject  
21 to that order.

22 Mr. Jorling. That's right.

23 Senator Muskie. I think that is the customary and, I think,  
24 less awkward phrase than the one we have got in the language  
25 before us. So I think "any person subject to an order issued

1 pursuant to subsection (A) (2) " is the appropriate language. I  
2 don't see anyone on the committee ---

3 The Chairman. Howard, what do you think of this suggestion  
4 that Ed has here?

5 Senator Baker. It is all right with me.

6 The Chairman. All right, Senator Cooper?

7 Senator Boggs?

8 Tom?

9 Well, without objection, then, that language will be accepted.

10 Senator Cooper. I have to raise ---

11 The Chairman. Oh, pardon me, Senator Cooper.

12 Senator Jordan. I think the whole page ought to be struck,  
13 when you are talking about \$25,000 a day. You can get these  
14 people killed and buried for \$1500, and they will pay the burial  
15 expenses for you.

16 Senator Cooper. I just don't want to pick, but validity,  
17 the last line, is that a procedural matter? Or is it substan-  
18 tive? Is that the substance of the order?

19 Senator Baker. Senator Cooper is exactly right.

20 Senator Spong. That is a good question.

21 Senator Baker. He sure is, that is right.

22 Senator Spong. That is a good question.

23 Senator Boggs. "Shall in such order."

24 Senator Baker. Oh, yes, that makes it an absolute nothing.

25 Senator Spong. You are not challenging whether the deputy

1 clerk signed it or tested it properly, or something like that.

2 The Chairman. Well, then, we have got to change this.

3 Senator Eagleton. Did Leon screw up again?

4 Mr. Billings. I didn't have anything to do with that, sir.

5 Senator Cooper. We are not discussing the matter of penal-  
6 ty.

7 The Chairman. Not at this point, no, sir.

8 "Against the Secretary to challenge such order." Is that  
9 correct, Ed?

10 Senator Baker. Right.

11 Senator Muskie. I think that is right.

12 The Chairman. Right without further objection, then.

13 Senator Muskie. I am glad we have got one perceptive lawyer  
14 around here.

15 Senator Baker. We have only got one perceptive lawyer.

16 Senator Cooper. I will tell you why. I used to pass on  
17 search warrants all the time.

18 (Laughter.)

19 Senator Muskie. We were where, when we got side-tracked?

20 Mr. Billings. You were on page 21, and jumping over to page  
21 22.

22 Senator Baker. Mr. Chairman, before we go on, might I in-  
23 quire how much longer you intend to continue, because it is a  
24 little after six now?

25 The Chairman. I am glad to discuss this matter, and I would

1 like the counsel of the chairman of the subcommittee, in refer-  
2 ence to the procedure, time bracket, when, where and so forth.

3 Senator Muskie. Well, let me ask how many members would be  
4 interested in proceeding longer? And I ask that without preju-  
5 dice.

6 Senator Spong. I am interested. I can't this evening.

7 Senator Jordan. I can't either.

8 Senator Baker. I can stay, Mr. Chairman. I prefer not to,  
9 but I can arrange to stay if that's the will of the committee.

10 Senator Muskie. Well, let's see.

11 Senator Boggs. I can stay.

12 Senator Eagleton. I would like to stay. My wife has got  
13 people over -- her friends.

14 Senator Muskie. You understand, I have a different problem  
15 than the rest of you. My family isn't here, so I concede that  
16 I don't have the problems that the rest of you do, and I am asking  
17 the question, just to see if we can squeeze out a little more.

18 Senator Cooper. May I ask what the agenda is for tomorrow?  
19 Will we be meeting tomorrow?

20 Senator Muskie. Well, let me ask you that. Now there is a  
21 vote on the floor at ten. There is another vote on the floor  
22 at 11:30. Now if we could get a room over there from 10:30 to  
23 11:30, we would be there killing time anyway. Could we use that  
24 time, that hour, to proceed with more work?

25 The Chairman. I am glad to.

1 Senator Spong. I would be glad to, and I am sorry about  
2 this evening. I take it we are not going to get to the fuel  
3 additives or the cutoff, or anything this evening?

4 Senator Muskie. No, we are not.

5 Senator Jordan. I can do that.

6 Senator Muskie. Well, I don't like to continue with ---

7 The Chairman. Three or four present.

8 Senator Muskie. Three or four, yes, and with obviously one  
9 or two points of view not represented in those three or four.  
10 That makes no sense. We must plow ground that we have to plow  
11 over again.

12 The Chairman. If we could meet tomorrow morning, right  
13 after, as soon after we vote as possible, would you agree to  
14 get ---

15 Senator Jordan. Where would you go?

16 Senator Muskie. We will try to get the Secretary's office.

17 The Chairman. We will notify your offices this evening as  
18 to where we will meet. Is that agreeable?

19 Senator Muskie. May I ask those who don't have to rush  
20 one final question? It ought not to take too long. But we will  
21 be asked by the press, or I will -- others may -- why, whether  
22 we finished tonight, and if not, why not.

23 Now the only explanation is that we have begun, we have  
24 covered, I think, close to 50 percent of the bill. We haven't  
25 run into any real difficulties at this point. We have tentatively



1 approved the deadline for the national ambient air quality  
2 standards, we haven't yet got to the automobile problem, and we  
3 are proceeding tomorrow to go as far as we can.

4 Now that's, I would say, ---

5 The Chairman. Mr. Chairman, to you as chairman of the sub-  
6 committee, the full committee is at work. That's the important  
7 thing. We are at work. There has been no delay in this commit-  
8 tee.

9 Senator Muskie. Well, I still would like to give some evi-  
10 dence, if I can, of the progress we have made, if there is no  
11 objection. It is helpful, I think, to reassure those who are  
12 suspicious.

13 The Chairman. I have no objection. I defer to the chairman  
14 of the subcommittee in that matter.

15 Senator Muskie. Between us, I don't think there is any  
16 reason to apologize for what we have done. We have been here,  
17 we have worked hard, we have spent long hours, and there has been  
18 no obstructionism, so I am personally completely satisfied with  
19 the progress.

20 Senator Eagleton. As one other point, could we all look at  
21 our calendars, as members of the committee and the two chairman  
22 to see, when we come back, some days certain?

23 The Chairman. I would be glad to be ready in the morning  
24 to discuss that.

25 Senator Eagleton. Days certain, when we come back.

1       The Chairman. All right, thank you.

2       We will recess, then, to 10:15.

3       (Whereupon, at 6:10 p.m. the committee recessed, to recon-  
4 vene at 10:15 p.m. of the following day, Tuesday, September 1,  
5 1970, in a room to be designated.)

